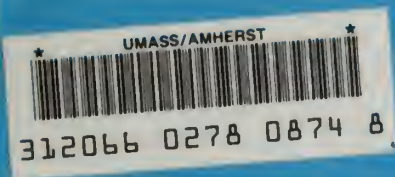


MASS. PS 20.2: Inl/3



1993/94

In-Service Training Program

Student Handouts

GOVERNMENT DOCUMENTS
COLLECTION
FEB 11 1994
University of Massachusetts
Depository Copy

Massachusetts Criminal Justice Training Council
41 Terrace Hall Avenue Burlington, MA 01803
(617) 727-7827

934/57

MASSACHUSETTS CRIMINAL JUSTICE TRAINING COUNCIL
IN-SERVICE TRAINING PROGRAM EVALUATION

DATES: _____

INSTRUCTIONS

Please rate the segments of your in-service training program by placing a numeric value using the following rating scale in the appropriate spaces below corresponding to the segment and evaluation criteria. Please add any specific comments in the narrative section.

RATING SCALE

5 = excellent 4 = above average 3 = average 2 = fair 1 = poor

EVALUATION CRITERIA

	<u>INSTRUCTOR</u>	<u>CONTENTS</u>	<u>HANDOUTS</u>	<u>AV AIDS</u>	<u>FACILITY</u>
Sgt. STEVE DALEY, MIT					
OFFICER					
SURVIVAL	()	()	()	()	()

Comments:

Chief Michael Grill, Chelsea Housing					
MV LAW	()	()	()	()	()

Comments:

Sgt. Robt. Rinn, Norwood P.D.					
DOMESTIC	()	()	()	()	()
VIOLENCE					

Comments:

	<u>INSTRUCTOR</u>	<u>CONTENTS</u>	<u>HANDOUTS</u>	<u>AV AIDS</u>	<u>FACILITY</u>
Off. Rosanio/Bill Cahill					
FIRST RESPONDER					
CPR	()	()	()	()	()

Comments:

Atty. Charles Elder					
LEGAL	()	()	()	()	()
UPDATE					

Comments:

Atty. John Scheft					
LEGAL					
UPDATE	()	()	()	()	()

Comments:

()	()	()	()	()
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Comments:

Overall how do you rate this program? ()
 Overall how would you rate the staff? ()

Additional Comments:

Motor Vehicle Law Update

I) Law of Arrest - MGL C.90/S.21

A) Review statutory law of
arrest as outlined in MGL
C.90/S.21

1) Violation of 1st paragraph
of C.90/S.10

- a) Operation by person under
16 years of age
- b) Operation w/o a license
- c) Nonresident without valid
license in possession or
easily accessible place
- d) Violation of 540 CMR 2.06(5)
shall be deemed to be operating
a motor vehicle w/o being duly
licensed and subject to penalties
in the provisions of C.90 and
C.90F.

- 1) operation outside of
license class
- 2) operation w/o proper
endorsements
- 3) violation of license
restrictions
- 4) violation of learner's
permit terms
- 5) violation of CDL out of service
order

2) Operation after license or right
to operate has been suspended or
revoked.

- a) It is not an arrestable
offense to operate a vehicle
that has a suspended or
revoked registration.
- b) Operation can be anywhere;
Comm. v. Murphy (1991),
405 Mass. 200, 539 NE2d 533

3) Probable cause to believe has
operated or is operating under
the influence of intoxicating
liquor or controlled substances.

4) Knowingly using a motor vehicle
without authority

5) Violation of MGL C.90/S.25

- a) Refuse to produce name
and address of the owner or
operator of a motor vehicle.
- b) Giving a false name or address

- c) Refuse to stop when signalled by police officer
 - d) Refuse to produce license and registration
 - e) Refuse to sign name for identification purposes
 - 1) Does NOT include refusing to sign a citation.
 - 6) Leave the scene after knowingly colliding with or causing injury to any person without stopping and making known name, address, and registration number of vehicle
- II) Commercial Driver's License
 - A) Classifications
 - 1) Classes are national standard used by all states for Class A, B, and C.
 - 2) Class D and M are Massachusetts standards.
 - B) Endorsements
 - 1) Endorsements are national standard used by all states.
 - A) "H" - Hazardous Materials
 - B) "N" - Tank Vehicles
 - C) "P" - Passenger Transport
 - D) "T" - Double/Triple Trailers
 - E) "X" - Hazardous Materials and Tank Vehicles
 - C) Implied consent
 - 1) CDL refusal form
 - D) Out of Service
 - 1) Out of Service Order
 - 2) Violation of order is deemed to be operating w/o a valid license
 - E) CDL Chemical Testing
 - 1) Administrative Per Se Form
- III) Duty to Care
 - A) Irwin v. Ware, 392 Mass. 745 (1984)
 - 1) "Duty to prevent harm"
 - B) Cyran v. Ware, 413 Mass. 452 (1992)
 - 1) "Duty to prevent harm" does not apply where individual is involved and the duty to prevent harm to many others is prevalent.
- IV) Extraterritorial Arrests
 - A) Comm. v. LeBlanc, 30 Mass. App. Ct. 1 (1991)
 - 1) Officer cannot cross a jurisdictional boundary

for a non-arrestable
offense

B) Comm. v. O'Hara, 30 Mass. App. Ct. 608 (1991)

- 1) Officer can cross a jurisdictional boundary for an arrestable offense
- 2) Even though the offense of 'operating to endanger is not arrestable under C.90/S.21, the court has recognized that it is arrestable if a breach of the peace results.

a) Misdemeanor committed in the officer's presence that results in a breach of the peace.

C) Comm. v. Griswold, 17 Mass. App. Ct. 461 (1984)

- 1) OUI is arrestable offense even if violator is operating a motorized bicycle.

D) Comm. v. Howe, 405 Mass. 332 (1989)

- 1) County sheriff can arrest for OUI offense

E) Comm. v. Ceria, 13 Mass. App. Ct. 230 (1982)

- 1) Probable cause to be determined at the time of arrest.
- 2) Person cannot be arrested for operating a motorized bicycle without a license.
- 3) Common law arrest can be made for misdemeanor committed in an officer's presence that results in a breach of the peace.

*25% CIVIL
ALL INFRACTIONS*

V) Series "D" Citations

A) Problems

- 1) The following are problems that are common occurrences in the issuance of the "D" series citations.
 - a) Violator name put in space for license number
 - b) CDL boxes inappropriately checked
 - 1) check yes on license only if Class A, B, or C.
 - 2) check yes on vehicle only if m/v meets

definition of Class

A, B, or C.

- 3) check yes on HazMat only
if placard req'd for federal
regulations

- c) Incomplete violator
information
- d) Improper statutory/CMR
designations
- e) Criminal offenses checked
as civil and vice versa.
- f) Improper fine assessments.

VI) Penalty Statute (C.90/S.20)

A) Purpose

- 1) Serves as a guide for all fine
assessments that are not found
elsewhere in the statute.

B) Schedule of assessments (defined in
C.90C/S.1)

- 1) Recognized statutory assessment
by the district court.
- 2) Must be posted in district court
and RMV offices.
- 3) Fines reflective of what an
officer is REQUIRED by statute
to list as an assessment on
a citation. Ref. C.90C/S.3(A)(1)
- 4) Example: MGL C.90/S.20 calls
for a "fine of not less than
\$20.00 nor more than \$100.00"
for a violation of MGL C.90/S.16.
The schedule of assessments lists
the standardized fine to be put
on a citation as \$50.00.

don't by STC
dist court

C) Speeding fines

- 1) It is common practice to lower
actuals speeds on citations to
give violators a break.
- 2) Officers are reminded that this
practiced is unlawful according
to C.90C/S.9-10.
- 3) Officers must list true and
accurate information and certify
that the citation is accurate and
given to the violator.
- 4) If an officer is looking to use
discretion to give someone a
break, his/her only alternative
is to issue the citation as

a "warning".

VI) Speeding statutes

A) Basic Speed Law

1) MGL C.90/S.17

- a) In all cases speed must be shown to be unreasonable and improper
- b) Basic speed law pertains to all unposted areas.
- c) If C.90/S.17 is used in a posted area it is only a prima facia case. The officer must still prove that the speed was improper and unreasonable.

① When speed limit is posted
② School zone 9/17

B) Absolute Speed Law

1) MGL C.90/S.18

- a) Elements are reflected in a per se statute.
- b) Should be used where speed limits have been established.
- c) Need to prove that established speed limit has been exceeded.

No need to be away if a speed limit is posted (painted 1.5 ft) from city or town

VII) Use of the Code of Mass. Regulations

- A) CMR designations are rarely used.
- B) Officers are unfamiliar with them
- C) Fines are sometimes lower than similar violations under C.85, 89, and 90.
- D) In all cases where a CMR violation is apparent, the CMR designation should be identified.
- E) If you have a violation for a CMR on a state highway, the CMR is the only violation that should be indicated as it specifically applies to the actual violation.

VIII) General Distinguishing Number Plates

(540 CMR 18.00 et.seq.)

A) Restrictions for use

- 1) No distinguishing number plate can be loaned, let for hire or rented.
- 2) Vehicle must be owned or controlled by plate owner except repairman who may road test a customer's vehicle.
- 3) Dealer plates may be used by employees or agents of the dealership for personal use,

but the operator must carry
a written document indicating
employment, ownership, or
agency (ie. business card.)

- 4) A "road test zone" for repairman
shall extend up to a ten mile
radius from the repairman's
place of business.
- 5) Owner contractor may use
general distinguishing number
plates on special mobile
equipment primarily used for
construction purposes including
mobile office and storage trailers.

B) Temporary plates

- 1) Temporary number plates may
be displayed with a permit
issued by the Registrar.
- 2) It is prima facie evidence
that a vehicle is unregistered
if the original permit is not
on the operator's person or
easily accessible place within
the vehicle or trailer.

IX) Nonresidents

- A) Comm. v. Brann, 23 Mass. App. Ct. 980
(1987)

- 1) Nonresident can operate m/v
registered and insured out of
state for up to 30 days in the
aggregate for a calendar year.
- 2) After 30 day period, minimum
requirements for insurance in
Massachusetts must be met.
- 3) Nonresident who becomes a resident of
Massachusetts must immediately obtain
a Mass. driver's license (MGL C.90/S.8)
- 4) Nonresident who moves to Mass. has time
that reciprocal agreement with prev.
state afforded Mass. resident to register
m/v, not to exceed 30 days. (MGL C.90/S.3)

X) Trailer Dollies/ Tow Restrictions

A) Registration requirements

- 1) M/V must be insured to be
registered.

B) Towing unregistered vehicles

- 1) Many officers are allowing a
unregistered motor vehicle
to be operated after the

vehicle was stopped and
the violator was cited.

- 2) This action is improper.
- 3) MGL C.90/S.9 reads that
"no person shall operate,
push, draw, or tow any
m/v...and...shall not
permit...same...unless...
registered..."
- 4) An officer cannot "permit"
an unregistered m/v to be
operated or it violates c.90/s.9.
- 5) Expired registration results
in vehicle being "not duly
registered".
Geary v. Travelers Ins. Co.
300 Mass. 314 (1938)
15 NE2d 238

C) Tow dollies

- 1) Need no registration
- 2) Vehicle being towed needs to be
registered

XI) Definitions: Licensee and Invitee

- A) Comm. v. Callahan, 405 Mass. 200 (1989)
 - 1) Area not utilized by vehicular
traffic, but used by recreational
vehicles is not an area where
the public has right of access
as licensees or invitees.
 - 2) A registered motor vehicle becomes
a recreational vehicle when it
is operated off road where the
public does not have access as
licensees or invitees.
(Ref. C.90B/S.20)

XII) Case Law Decisions

- A) Supreme Judicial Court
 - 1) Decisions are binding
- B) Appellate Division
 - 1) Decisions are binding
 - 2) SJC may hear case on appeal or
may choose to hear case on its
own initiative.
- C) Superior Court and District Court
 - 1) Decisions are not binding
 - 2) Reflects interpretation of a
single superior court judge.
 - 3) Decision may be appealed.

TRIAL COURT OF THE COMMONWEALTH
DISTRICT COURT DEPARTMENT

EXCERPT FROM BULLETIN No. 3-90

October 4, 1990,

Item # 40 (Motor Vehicles: Proving Speeding Infractions)

40. Motor Vehicles: Proving speeding infractions. Before beginning a hearing on a speeding infraction, a magistrate must determine from the citation whether the motorist has been charged under G.L. c.90 §17 or under §18, since the elements to be proved are different under each section. If the citation is for speeding in violation of a Massachusetts Turnpike regulations, the same distinction must be made between infractions charged under 730 Code Mass. Regs. s. 5.04(6)(a) and those charged under 730 Code Mass. Regs. s. 5.04(6)(b).

A G.L. c.90 §17 charge requires proof of speed "greater than is reasonable and proper, having regard to traffic and the use of the way and the safety of the public." The statute lists six situations (including violation of the posted speed established under §18) which are prima facie evidence that the motorist's speed was greater than was reasonable and proper, but "(1) the case so made out is a prima facie case only. It may be contradicted or explained." Comm. v. Sherman, 191 Mass. 439, 441, 78 N.E. 98, 99 (1906). This is "in some cases a defendant may be convicted even if he has not exceeded the rate named in the prima facie clause of the statute, and in some he may be acquitted even though he may have exceeded it." Comm. v. Cassidy, 209 Mass. 24, 28, 95 N.E. 214, 216 (1911).

The Cassidy case indicates that the fact that a motorist has exceeded the posted speed limit is not conclusive in a §17 case. In such a case, a speed in excess of the posted speed limit may or may not be in excess of what was "reasonable and proper," depending on the conditions at the time. Such a motorist must be permitted to present relevant evidence, and be given a reasonable opportunity to offer argument, about three factors that comprise the statutory definition of "reasonable and proper", namely "(1) . . . the traffic then upon the road; (2) . . . the use-potential as well as actual - then being made of the road by all entitled to use it; and (3) . . . the broad considerations of safety to the public, applicable at all times to the use of highway, which, then and there, should govern the actions of anyone operating an automobile upon them." Comm. v. Bosworth, 257 Mass. 212, 217, 153 N.E. 455, 456 (1926). A finding of responsible is warranted only if it is proved by a preponderance of evidence that the defendant's speed was greater than that which was reasonable and proper at the time.

By contrast, a speeding charge under G.L. c.90 §18 is a per se offense which requires proof only that the motorist "violate[d] a special (speed) regulation lawfully made under the authority of section eighteen." G.L. c.90 §20, second par. In a §18 case, the issue of reasonable and proper operation is irrelevant. While strict rules of evidence are not required in CMV hearings, the prosecuting officer must be prepared to prove the existence of such applicable special speed regulation if it is not conceded by the motorist.

The distinction between §17 and §18 infractions is mirrored exactly in the Massachusetts Turnpike Authority's speeding regulations. Motorists charged under 730 Code Mass. Regs. s. 5.04(6)(a) must be shown to have operated "on the Turnpike at a rate of speed greater than that which is reasonable and proper having regard to traffic, condition of the roadway and the safety of the public." By contrast, motorists charged under 730 Code. Mass. regs. s. 504(6)(b) need only be shown to have operated "on the Turnpike roadway at a speed in excess of fifty-five (55) miles per hour" or "where a lesser speed limit is posted, (to have operated) in excess of such posted speed limit."

In conducting magistrate hearings, it is important to keep the distinction between the two types of infractions in mind and, where appropriate, to inform the parties of the different elements of each.

Domestic Violence

LAW ENFORCEMENT AND DOMESTIC VIOLENCE:
COMMONLY ASKED QUESTIONS^{1/}

I. Interjurisdictional Arrest

1. A 209A order is in effect in Town A. The husband violates the order by assaulting the wife in Town A. Husband flees to Town B. Do the Town B police have the authority to arrest the husband upon notice of the assault by Town A police?

Town B police may arrest the husband because the mandatory arrest provision of Chapter 209A Section (6)(7) requires an arrest whenever a police officer has probable cause to believe that the defendant has violated a restraining order. This means that an officer of a city or town must arrest anyone located within his or her jurisdiction who the officer has probable cause to believe has violated a restraining order under 209A or its related provisions.

It makes no difference in the determination of probable cause that the offense may have been committed in another city or town; if a police officer concludes that there is probable cause that a restraining order was violated anywhere in the Commonwealth, the officer is obligated, within his or her jurisdiction, to make the arrest.

As in any other situation, police officers may rely on information provided to them by officers in another jurisdiction to establish probable cause.

2. A 209A order is in effect in Town X. The boyfriend calls from Town Y and threatens the girlfriend who is in Town X. Do the Town Y Police have the power to arrest the boyfriend upon notification by Town X?

If there is a no-contact order in effect against the boyfriend, then the threatening phone call is a violation of the order, and the mandatory arrest provision of Chapter 209A

1/The Attorney General's Office wishes to acknowledge the contribution of Cathy Sullivan, Assistant District Attorney, Middlesex County, in the preparation of Sections I - III.

is triggered. Therefore, based upon the probable cause reasoning contained in the answer to question #1, once the Town Y police are notified that the order has been violated, Town Y officers are required to arrest the boyfriend.

II. PROBABLE CAUSE

1. How long does the "mandatory arrest" power last? Is there any problem about the "staleness" of probable cause?

As long as the probable cause does not dissipate, the right to arrest continues to exist. In 209A cases, once an officer learns that an order has been violated, the probable cause to arrest has been established. Unless new facts come to light indicating that no restraining order was in effect against the defendant at the time of the reported offense, or that the report of abuse was unfounded, probable cause, once established, continues to exist.

III. WARRANTS

1. A 209A order is in effect in Town Q. The husband assaults the wife in her home in Town Q. Husband flees to his mother's home in Town Q. Can the police enter the mother's home to arrest the husband?

If the mother refuses to allow the police to enter her home, the police cannot enter the home, absent exigent circumstances, without a search warrant. Therefore, in this situation, the police must obtain both a search warrant to gain entry to the home and an arrest warrant to apprehend the defendant.

If the husband had fled to his own apartment in Town Q, and refused to answer the door, the police must again, absent exigent circumstances, first obtain an arrest warrant to enter his home and take him into custody.

IV. SERVICE OF ORDERS

1. A woman obtains an emergency 209A order against her husband. The police attempt in-hand service twice, and then leave the order with the husband's sister, with whom he is staying. For the purposes of the ten-day hearing, is this sufficient notice to the husband under Chapter 209A?

Yes, the 1990 Amendments to Chapter 209A expressly deleted the in-hand service requirement for service of 209A orders. See, Chapter 209A, Section (7).

2. Regarding multi-jurisdictional problems, when a victim obtains an Emergency 209A from an on-call Justice, can the on-call Justice also issue a complaint and arrest warrant for the perpetrator?

An on-call Justice cannot issue a complaint and arrest warrant over the phone. For an arrest warrant to be issued, a sworn affidavit must be presented in person to the on-call judge.

V. MANDATORY ARREST

1. If an alleged abuser is not served with a temporary restraining order before he appears at the victim's door, can you arrest or must you first serve the order and tell him to leave and not come back?

If the perpetrator is at the victim's home, and the only alleged violation is of the vacate or no-contact order, then the police must serve the order and warn the perpetrator that if he returns to the premises, he will be arrested. Unless the police have previously served the defendant with the order, they cannot arrest him for a violation of the vacate order.

However, if the situation includes any circumstances which would give rise to the "arrest as the preferred response" provisions of Chapter 209A, Section 6(7), then the police could arrest the perpetrator. Under Section 6(7), arrest is the preferred response when the officer has probable cause to believe that the individual has committed: (a) a felony; (b) a misdemeanor involving abuse as defined in Section One of Chapter 209A; or (c) an assault and battery in violation of Chapter 265, Section 13A.

2. Since the police have the right to arrest where probable cause exists under Chapter 209A, Section 6, what is the proper response in the situation where the police arrive on the scene and the abuser has fled, and the facts indicate either a mandatory arrest (violation of an order) or a preferred arrest response (probable cause to believe that abuse has occurred)? Can the officer go to court and get a complaint and warrant issued? What if the clerk refuses to issue a warrant?

A major area of confusion concerning 209A has been the felony/misdemeanor distinctions in due process owed to the defendant. An individual accused of a misdemeanor must receive notice and has the right to be heard before a complaint is issued. Specifically, under Chapter 218, Section 35A, before process (complaint) issues, the District Court must give the accused person, written notice of the application and an opportunity to be heard in opposition, unless exigent circumstances are present. The exigent circumstances that remove the need for written notice involve an imminent threat of bodily injury, the commission of a crime or of flight from the Commonwealth by the accused person.

Obviously, given the nature of the crimes committed in violation of Chapter 209A, there is an inherent "threat of bodily injury." In addition, if the abuser has violated a restraining order, he has already committed a crime, and would more than satisfy the "imminent threat ... of the commission of a crime" component of Chapter 218, Section 35A. Finally, in the above scenario, the abuser has already fled the scene and in light of past experiences with domestic violence cases, there is always the likelihood that he will flee - at least temporarily - to another state to avoid prosecution. Therefore, in this scenario, it would be reasonable to advise the clerk that the combination of the arrest authority under Chapter 209A, Section 6 and the existence of "exigent circumstances" pursuant to Chapter 218, Section 35A would allow the issuance of a complaint in the absence of either notice to the accused and/or a sworn complaint by the victim.

In addition, and probably more importantly, the authority to arrest for violation of a restraining order must be exercised, i.e., mandatory arrest, and is itself, an exception to the warrant requirement.

3. Is an abuser's failure to surrender the keys to the premises a violation of the vacate order and therefore subject to mandatory arrest?

Under the 1990 Amendments, Chapter 209A, Section 6(7) explicitly requires mandatory arrest when a temporary or permanent vacate, restraining, or no-contact order has been violated. Furthermore, chapter 209A, Section 1 was amended to include the definition of "vacate order". In pertinent part, the statutory definition of "vacate order" includes:

leave and remain away from the premises;

surrendering forthwith any keys to said premises to the plaintiff; and

shall not shut off or cause to be shut off any utilities or mail delivery to the plaintiff.

Therefore, although it would appear that the traditional recourse of contempt would be more appropriate in these purely civil matters, the language in Chapter 209A clearly requires mandatory arrest for the violation of a vacate order, and since "vacate order" includes the surrender of keys, any refusal to do so is subject to the mandatory arrest provision of Section 6(7). The legislative intent behind the mandatory arrest provision clearly states that a violation of an order will result in arrest, therefore, the inclusion of surrendering keys, and not interfering with utilities or mail delivery in the statutory definition of a vacate order must also be enforced as written.

VI. LIABILITY ISSUES

1. Are officers protected from civil suits under 42 U.S.C. 1983 brought by domestic violence victims?

No, under both the Federal and State Civil Rights Acts, a police officer can be held personally liable. A plaintiff bringing suit against a police officer generally relies on one of three sources of law: the Massachusetts Torts Claims Act, G.L. Chapter 258, Section 2; the Federal Civil Rights Act, 42 U.S.C. 1983; and the Massachusetts Civil Rights Act, G.L. Chapter 12, Section 11H and 11I.

Under the Mass. Torts Claims Act, "public officials shall be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any public employee while acting within the scope of his office or employment." The municipality, as a public employer, is liable for any judgment rendered, and not the individual officer. Since liability under the Mass. Torts claims Act is limited to \$100,000, most plaintiffs choose to bring suit under the Federal and State Civil Rights Acts, which do not limit the amount of damages available to a plaintiff.

Under both the Federal and State Civil Rights Acts, in addition to the personal liability of the officer, the municipality may also be held liable if the plaintiff proves that as a result of "policy or custom," the town was responsible for the plaintiff's injuries. Monell v. Department of Social Services, 436 U.S. 658 (1978).

(Note: Under Chapter 209A, Section 6(7), "no law officer shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a domestic violence incident for an arrest based on probable cause ...")

VII. MISCELLANEOUS ISSUES

1. I received a call from a woman whose daughter (who is over age 18) is being beaten by her boyfriend. The mother is not a victim of abuse by the boyfriend, but the daughter won't file a complaint.

The key consideration in this situation is whether the police have probable cause to arrest the boyfriend. Probable cause is unlikely to exist without the victim's (daughter's) statement unless the mother is an eyewitness to the abuse. The secondary problem here is that even if the police can establish probable cause to arrest the boyfriend, if the daughter is unwilling to seek a complaint or to prosecute, then there is really nothing more that either the mother or the police can do.

2. What if a parent and child are fighting and the parent strikes the child in front of a police officer?

The best approach to such a situation is to use common sense. Some factors that responding officers may consider when deciding whether to institute the preferred arrest policy are: (a) Is the action by the parent clearly abusive or is the action disciplinary?; (b) Is there a pattern or prior history of abusive behavior in this relationship?

An alternative or additional response would be to file a 51A for child abuse to have the potentially abusive situation investigated.

3. How long must an officer stay at the scene of a domestic violence call, particularly if there is a possibility of the batterer returning?

Chapter 209A, Section 6(1) mandates that officers responding to domestic violence calls "remain on the scene of where said abuse occurred as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of a law officer. This shall include, but not be limited to, remaining in the dwelling for a reasonable period of time."

The Police Guidelines, Section 2.0 reiterate the provision set forth in Chapter 209A, Section 6(1), and do not add any further instructions.

Therefore, the most important consideration is reasonableness in light of the specific facts of the situation. If there is an established history of violence and a genuine fear for the safety of the victim, it may be more

reasonable to assist the victim in finding a "safe place", either at a relative's or friend's home or a shelter rather than requiring a police officer to remain on the scene for any extended period of time. (Chapter 209A, Section 6(3); Police Guidelines 2.0, Section C.)

4. Our Department has many restraining orders on file which were issued out of Probate Court and contain no expiration dates. Many are several years old, but include recent correspondence from attorneys stating that the orders are still valid. Are these restraining orders issued out of Probate Court still in effect?

Unlike restraining orders issued under 209A, which expire after one year, orders issued under Chapter 209, Section 34B by the Probate Court as part of a divorce decree remain in effect until a judgment for divorce has been entered or a permanent restraining order has been issued as part of the divorce proceeding. Any divorce judgment will vacate any existing temporary orders and any final divorce judgment which contains a restraining order is fully enforceable.

5. The plaintiff/mother went to District Court in Town A on Tuesday, where she applied for and received a 209A order against her own mother to surrender custody of her (the plaintiff's) minor children.

The plaintiff went to the Town A Police on Thursday to have them execute the order. When the police arrived at the grandmother's house, she presented them with an order from the Probate Court in Town B that was issued on Wednesday. This order awarded the grandmother custody of the minor children.

In light of these inconsistent orders, does the Probate Court order awarding the grandmother custody supercede the 209A order?

- a. Where 208 and 209A Orders co-exist, which takes precedence?

Any Probate Court order affecting custody or support which is prior to or subsequent to the issuance of a 209A order, takes precedence over the custody or support provisions of the 209A order.

FREQUENTLY ASKED QUESTIONS ABOUT STALKING

The following is our current understanding of the application of the stalking law. Check with your local District Attorney's office, however, to determine whether a stalking charge is appropriate in a particular case.

1. What does the term "repeatedly" mean?

This term should be given its common sense meaning, that is, "more than once".

2. Are threats a necessary element of stalking, and what kinds of threats are sufficient to satisfy this element?

Yes, it is an element of the crime of stalking that a defendant made a threat with the intent of placing the victim in imminent fear of death or serious bodily injury. Unless a threat has been made, stalking cannot be charged.

A verbal threat or an action which clearly is intended to communicate a threat to the physical well-being of the victim, may also satisfy the "threat" element of the crime. For example, mailing a copy of a burial insurance policy to the victim may be a sufficient "threat" to satisfy this element of the crime.

NOTE: The victim and perpetrator need not have any special relationship (for example, "family or household member" as in c. 209A) for stalking to be charged under G.L. c. 265, § 43(a).

3. If there is an outstanding restraining order issued by the Superior Court involving two parties not eligible for a domestic violence restraining order (for example, co-workers who have never had a dating relationship), can stalking in violation of that restraining order be prosecuted under c. 265, § 43(b)?

Yes, the violation of a Superior Court restraining order prohibiting a person from imposing any restraint on the personal liberty of another is no different from the violation of any other restraining order for the purpose of charging the defendant with stalking in violation of a restraining order under G.L. c. 265, § 43(b). However, other violations of non-domestic violence restraining orders are not criminal offenses and are only enforceable through civil contempt proceedings.

4. Can one of the incidents required to prove the elements of stalking have occurred before the effective date of the law?

No. In our view, stalking cannot be charged under these circumstances. All of the conduct necessary to prove the crime of stalking must have occurred after May 18, 1992, the effective date of the law.

5. In charging stalking, what date do you use on the complaint when the incidents giving rise to a charge of stalking occurred on different dates?

You should charge "diverse dates".

6. If the particular circumstances don't support a charge of stalking, what other charges might be brought?

Some examples of the charges which may be brought include:

Intimidation of a Witness, G.L. c. 268, § 13B

Annoying Phone Calls, G.L. c. 269, § 14A

Threat to Commit a Crime, G.L. c. 275, § 2

Annoying or Harassing a Person of the Opposite Sex, G.L. c. 272, § 53

7. Where should the complaint be brought if various incidents occurred in different jurisdictions?

A. We are advising law enforcement officials to bring the complaint in the jurisdiction where the last incident used to satisfy all the elements of the offense occurred, because it is at that time that the crime of stalking has occurred. For example, if a defendant has been waiting outside his former girlfriend's place of work every day in Lynn, and then calls her at her home in Somerville and threatens her life, we would recommend that the complaint be brought in the Somerville District Court. (The Attorney General plans to file legislation which would establish venue in any jurisdiction where an act constituting an element of the crime of stalking occurred.)

B. However, if some of the incidents occur out of state, e.g., at the victim's cottage in New Hampshire, but the most recent one occurs in Massachusetts, it is not clear that a stalking charge can be brought in Massachusetts.

8. Do the incidents underlying a stalking complaint have to occur within a certain period of time?

You will have to determine whether or not the crime of stalking should be charged on a case-by-case basis. There is no requirement under the law that the incidents occur within a certain period of time. For example, in one case, a defendant may threaten a victim and then, once a month appear in front of her home and remain all day. In another case, on a single day, the offender may threaten a victim over the phone, go to her place of employment, be waiting outside of her home later that day and follow her out in the evening. In our view, both of these cases could constitute stalking. However, in some cases, the incidents may be so far apart in time, and their connection so slight, that a stalking charge would be inappropriate or unprovable.

9. What if the restraining order is from another jurisdiction?

As long as it is a Massachusetts order, the location of the issuing court is irrelevant. (The Attorney General's office plans to file legislation to include similar restraining orders issued by courts in other states within the definition of restraining order in the stalking law.)

10. What does the term "threats" mean?

"The word 'threat' has a well established meaning in both common usage and in the law. It is 'the expression of an intention to inflict evil, injury, or damage on another.' (Citation omitted) In law 'threat' has universally been interpreted to require more than the mere expression of intention. It has, in fact, been interpreted to require both intention and ability in circumstances which would justify apprehension on the part of the recipient of the threat." Robinson v. Bradley, 300 F.Supp. 665, 668 (D.Mass.1969) However, in Commonwealth v. Ditsch, the Massachusetts Appeals Court retreated from the requirement that a defendant be able to effectuate his threat. In that case the Appeals Court stated, "[w]e do not think that the absence of immediate ability, physically and personally, to do bodily harm precludes a conviction for threats." 19 Mass. App. Ct. 1005 (rescript) (1985). In Ditsch, the defendant was incarcerated and made threats in letters written to his mother-in-law. The court found that the mother-in-law could reasonably have believed that the defendant actually had the ability to cause her bodily harm, either personally after his release or through his employment of an agent.

0102p

NORWOOD POLICE DEPARTMENT
DOMESTIC VIOLENCE TRAINING BULLETIN

Chapter 265 Section 43 - Stalking Law

C. 265 S. 43 Provides that:

Whoever willfully, maliciously, and repeatedly follows or harasses another person and who makes a threat with the intent to place that person in imminent fear of death or serious bodily harm shall be guilty of the crime of STALKING.

It is a Felony for which you may arrest upon probable cause.

The elements necessary for Stalking consist of:

1. That the defendant acted Willfully;
2. That the defendant acted Maliciously;
3. That the defendant Followed OR Harassed another person;
4. That the defendant engaged in the conduct Repeatedly;
5. That the defendant made a Threat, with the intent to place the victim in imminent fear of death or serious bodily injury.

For the purpose of this statute Harasses is defined as:

A knowing and willful pattern of conduct or a series of acts over a period of time directed at a specific person which seriously alarms or annoys the person. Said conduct must be such as would cause a reasonable person substantial emotional distress.

The staffs of the Attorney General, District Attorney, and Clerk of Court have all suggested that until case law provides further guidance that we interpret the new law liberally with special attention to protecting the victim. The conduct has to be repeated or have occurred in a pattern which shows that it is ongoing. A threat must be made but can be made directly, indirectly, or even inferred in some circumstances.

As in all other domestic violence prosecutions, complete and competent reporting of the facts is essential. Make sure that each of the elements of the crime are addressed in the report. You may think that the evidence falls short of satisfying the elements of stalking. In such a case, encourage the victim to explain all that has transpired and you may find the new law applies.

In situations where the Stalking law does not apply you may be able to charge:

Ch 268 S 13B Intimidation of Witness.

Ch 269 S 14A Use of Phone to Make Annoying Calls.

Ch 276 S 2 Threat to Commit a Crime.

If the stalking violates a vacate, restraining or no contact order the complaint form should state as such and use 265 43(b) on the form. If it is a second offense that we know of, state so on the complaint form and use 265 43(c) on the form.

This law was obviously enacted to protect domestic violence victims but no where in the law does it refer to "family or household members." The stalking law can be used to protect anyone who is repeatedly harassed or followed and threatened by anyone. This law could be used to protect public officials, politicians, celebrities, or anyone who is a target of stalking so long as the elements of the crime are met.

Remember that it is the policy of the N.P.D. to make arrests in domestic violence situations when possible.

IF YOU HAVE ANY DOUBTS OR QUESTIONS ASK YOUR SUPERVISOR



NORWOOD POLICE DEPARTMENT

DOMESTIC VIOLENCE INVESTIGATION CHECKLIST

1. VICTIM Name: _____

- _____ Described the victim's location upon arrival.
- _____ Administered 1st Aid to the victim and noted if medical treatment sought.
- _____ Noted time dispatched, arrived, and when victim spoke.
- _____ Recorded any spontaneous statements made by the victim.
- _____ Described the victim's emotional condition.
- _____ Described the victim's physical condition, including size in relation to attacker.
- _____ Described the victim's injuries in detail, (Size, Location, and Coloration).
- _____ Noted victim's relationship with suspect.
- _____ Recorded history of abuse and court orders.
- _____ Gave victim notice of rights (209A card).
- _____ Recorded temporary address/phone of victim.
- _____ Informed victim suspect may soon be bailed.

2. Witnesses

- _____ Interviewed the reporting party.
- _____ Identified all witnesses and interviewed them separately.
- _____ Recorded all witnesses addresses and phone numbers.
- _____ Listed names and ages of all children present.
- _____ Interviewed the children.
- _____ Recorded names of emergency personnel.
- _____ Identified treating physician.

3. SUSPECT Name: _____

- _____ Described the suspect's location upon arrival.
- _____ Administered 1st Aid to the suspect and noted if medical treatment sought.
- _____ Recorded any spontaneous statements made by the suspect.
- _____ Described the suspect's emotional condition.
- _____ Described the suspect's physical condition.
- _____ Described the suspect's injuries in detail.
- _____ Documented evidence of use of alcohol or drugs by the suspect.
- _____ Following Miranda, asked suspect if he wanted to make a statement, knew of restraining order or understood order.

4. Evidence

- _____ Photographed the crime scene.
- _____ Took "Full Body" shot of victim.
- _____ PHOTOGRAPHED the Victim's Injuries.
- _____ Photographed the suspect's injuries.
- _____ Impounded or took into evidence all weapons used or items thrown.
- _____ Impounded weapons for safekeeping.
- _____ Attached related reports, photos and evidence tags.

Investigating Officer

Date

Commanding Officer

Date

APPENDIX E
EFFECTS OF CIVIL CASES ON THE POLICE RESPONSE
TO DOMESTIC VIOLENCE

(*NOTE: The material in this Appendix was taken in its entirety from "Lesson Summary In-Service Training Domestic Violence" authored by Sgt. John Christensen (Somerville) and Sgt. Clare Schroeder (Waltham) for the Massachusetts Criminal Justice Training Council, May 1990.)

I. Background of Tracey Thurman vs. Torrington, CT. Police

On June 25, 1985, in Thurman v. Torrington, a federal jury in Connecticut awarded 2.3 million dollars to a victim of domestic violence against the Town of Torrington and its police department. The plaintiff's son was also awarded \$300,000 for emotional suffering sustained as he witnessed his mother being stabbed and kicked by his father. The plaintiff had alleged that the police department had a policy, practice and/or custom of not intervening and discouraging arrests in domestic violence cases. She claimed that this disparate treatment violated the equal protection clause of the 14th Amendment and gave rise to a cause of action under Section 1983 of the Civil Rights Act of 1876 by creating unequal classes of persons for the purpose of police protection.

II. Background of Irwin v. Town of Ware, MA.

The Massachusetts Supreme Judicial Court's decision (1984) Irwin v. Town of Ware, made it clear that a municipality can be held liable for the failure of its police officers to act with reasonable care in protecting members of the general public. The Irwin case dealt with the failure of the town's police officers to remove from the road a driver who they knew or had reason to know was drunk and who later struck and killed several members of the plaintiff's family. The Court held that, on the basis of the facts, a "special relationship" existed between the defendant municipality and the plaintiff because the defendant "reasonably could foresee that (the police) would be expected to take affirmative action to protect the plaintiff and could anticipate harm to the plaintiff from the failure to do so".

III. The Ware Case: Four Elements

The Irwin decision identified four elements which a plaintiff must establish in order to file a tort claim against a city or town. A plaintiff must show:

- A. That the municipal defendant or its agents owed the plaintiff a duty of care;
- B. That the defendant or its agents acted or failed to act in violation of such a duty;
- C. That the plaintiff was injured; and
- D. That a causal relationship existed between the act or failure to act and the injury.

FAMILY VIOLENCE IS A CRIME AND SHOULD BE DEALT WITH AS SUCH.

IV. Effects of Civil Cases on Police

Rarely are police officers now being held liable for their over-reactions, such as in excessive force and hot pursuit situations. Judgments against officers, departments, and municipalities have been reduced mainly due to administrators setting strict guidelines, policies and procedures. The more common cases in which the police are now being held liable are for their inactions, or failure to act. This was the basis of both the Torrington and Ware cases. Experts who seek to reduce government losses in such suits recommend the use of training, guidelines, policies and procedures to prevent a Torrington case from happening in Massachusetts.

Domestic Violence Report

Victim's Name	Victim's Phone	Alcohol Involved (x)	Drugs Involved (x)	Illness Involved (x)
	Home-	Yes ()	Yes ()	Yes ()
	Work-	No ()	No ()	No ()

Victim's Address	Victim's - D/O/B	Victim's Social Security Number

City, State

1. Is there a 209A restraining order already in effect?	Yes [] No []
2. Does the suspect have weapons in the residence?	Yes [] No []
3. Is the victim in fear of those weapons?	Yes [] No []

Suspect's Name

Suspect's Address	Suspect's Date of Birth	Suspect's Social Security Number

City, State

Victim's Occupation	Suspect's Occupation

Abuse Inflicted to victim by: (x)

1. Use of a gun	[]
2. Use of fist	[]
3. Use of club or knife	[]
4. Other -	[]

Date of Abuse
/ /
Date of report
/ /

Children (x)	
1. Involved	
2. Present	
3. N/A	
4. Aware	

Age	Children's Names

Was victim injured? Yes [] No []

Hospitalized? Yes [] No []

Relationship victim to abuser (x)

1. Victim is husband	
2. Victim is wife	
3. Victim is a male-relative	
4. Victim is a female-relative	
5. Victim is male-friend	
6. Victim is a female-friend	

Should this case be reviewed by the D.S.S.? if yes,

Date of notification - / / Notified by:

Should this case be reviewed by a victim advocate in the district court? Yes [] No []

Is there a history of Domestic Violence between both parties?

Yes () No () If yes,

Year - Location -

Number of years-victim & suspect have known each other? - ()

Additional Comments (To aid the court in providing assistance to the victim)

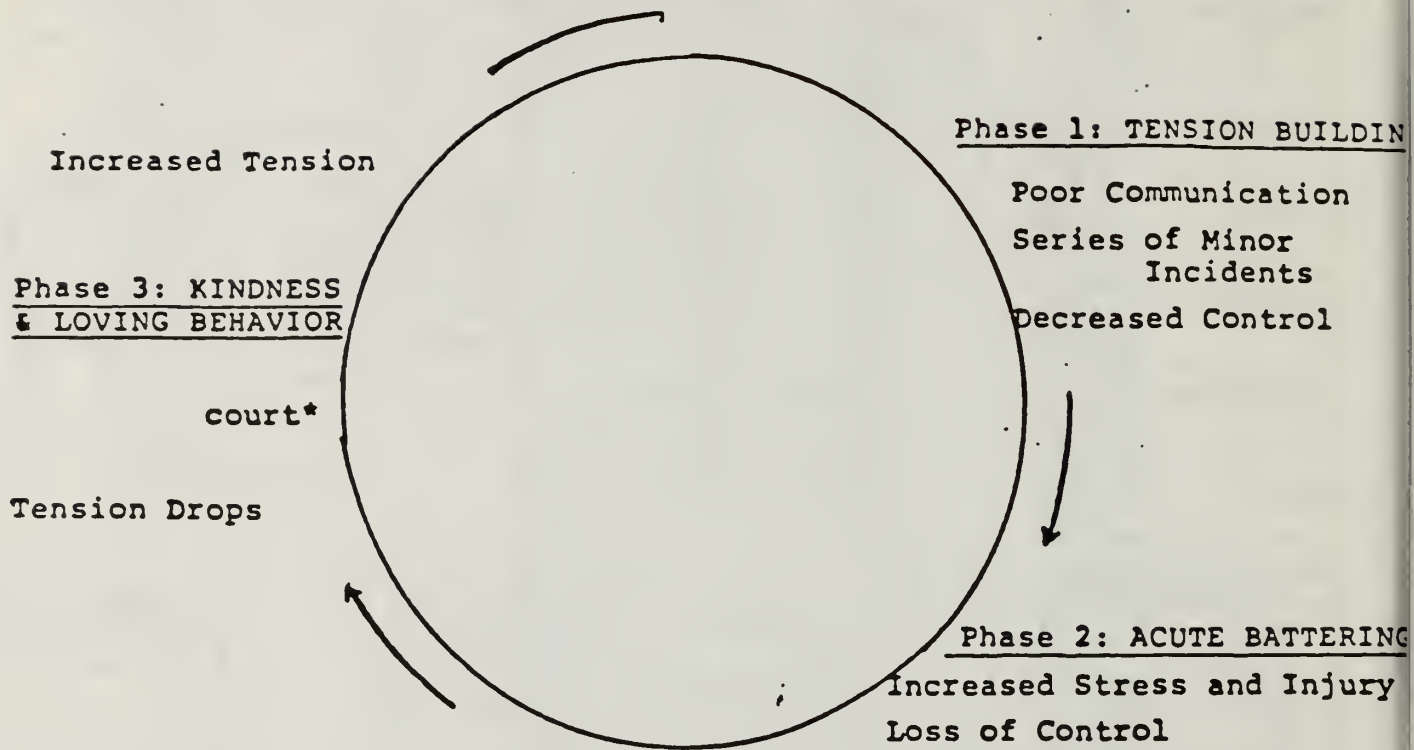
Action Taken

Arrest [] Summons [] Taken to Shelter [] Emergency 209A issued [] Temporary Order issued [] Other []

Signature - Responding Officer

Signature of Supervisor

CYCLE THEORY OF VIOLENCE



Phase 1: Tension Building	Phase 2: Acute Battering	Phase 3: Kindness and Loving Behavior
<p>Victim compliant, good behavior</p> <p>Batterer experiences increased tension</p> <p>Victim minimizes problems</p> <p>Batterer increases threats</p> <p>Victim denies anger</p> <p>Batterer takes more control</p> <p>Victim withdraws</p> <p>Batterer controls more</p> <p>Tension becoming intolerable</p>	<p>Batterer unpredictable, claims loss of control</p> <p>Victim is helpless, feels trapped</p> <p>Batterer highly abusive</p> <p>Victim traumatized</p>	<p>Batterer often apologetic attentive</p> <p>Victim has mixed feelings</p> <p>Batterer is manipulative</p> <p>Victim feels guilty and responsible</p> <p>Batterer promises change</p> <p>Victim considers reconciliation</p> <p><i>THREATS</i></p> <p>*court: often the victim must appear in court during this time...</p>

"Why Do I Stay?" You Ask

You're wondering why I stay. I hear your chiding voice say, "Get out, save yourself. You state with such authority that if it were you, "you'd be gone."

Can we talk? No, I mean really talk? Will you take a minute to come into my world, experience what I do. . . just for a minute. . .

I'm 28, married for six years, have two kids, 5 and 3. My husband, my abuser, tries to take care of us. . . he works, sometimes he drinks. He loves us, I know he does. But sometimes he loses it, control, I mean, and he hits me. He doesn't mean to; he's sorry afterwards; he doesn't want anyone to know what he's done. He promises never to do it again. He says he'll kill me if I leave him; or he'll kill himself; or take the kids away from me.

What can I do? I can't afford an apartment; I can't afford to raise the kids without him. I'm scared. I'm not sure I can get a job and even if I could. . . will it pay all the bills? the rent, the car, the medical costs, the clothes? And thinking about living without him. . . I don't know. . . I love him. He's the only one I've ever known. I might make it financially but depriving them of their father. . . there's so much guilt. . .

Are you still wondering why I stay?

I need some options; I need some real good choices. Can you give me those? Give me choices and I'll choose. Maybe I'll even choose to leave.

-- Anonymous

Thanks

Senator Sal Albano & Staff
Mayor Eugene Brune
Paul Duhamel
Sgt. Mary Cunningham, S.P.D.
Altrusa Club of Boston
J. J. Milder of the Putnam Advisory Co., Inc.
Bank of Boston
Bank of New England
Cambridge Trust Company
The Provident
Community Builders Cooperative
Council on Aging
First National Bank of Boston
Boston Women's Fund
Crate & Barrel
Devereau Charitable Foundation
Boston Globe Foundation
LOTUS Development Corp.
Modern Cuts
Fresh Pond Seafood
Griffin Florist
Somerville Theatre
Tufts University
John Ernest Hoffman Foundation
Mamie & Peter Zschokke
Park Sales & Service
Project Bread
Project Shelter
Polaroid Foundation
Harvard Law School Christian Fellowship
Dr. Floyd Russak of Healthstop
Russell Colgate Foundation
Patrons of Jack T's Convenient Store
John & the Patrons of Ball Square Liquors
The Evelyn M. Jenks Trust
Shawmut Charitable Foundation
Sir Francos
Somerville Kiwanianes
WEEI 590 Fund
Site Built Systems, Inc.
Wiseman Insurance Agency, Inc.
Showbiz, Inc.
All of Our Students & Volunteers
All the Supporters of Our RAISE THE ROOF Campaign
First Congregational Church
St. Ann's
St. Clement's
Trinitarian Congregational Church, Concord
Somerville Community Baptist Church
The Rug Store
Center for Creative Art Therapy
Florida Fruit Market
Andler Bottle Co.
Church Women United Cambridge
Somerville Commission for Women

... also SPECIAL THANKS to all those others who have supported us in any way!

IMPORTANT INFORMATION

THIS ORDER IS EFFECTIVE WHEN MADE. IF YOU HAVE BEEN ORDERED TO REMAIN AWAY FROM A PARTICULAR RESIDENCE OR WORKPLACE, YOU MAY BE ARRESTED IF YOU RETURN THERE, EVEN IF YOU RETURN WITH THE PERMISSION OF THE PLAINTIFF. IF THE PLAINTIFF IS NOW WILLING TO HAVE YOU RETURN, HE OR SHE MUST APPEAR BEFORE THE COURT AND ASK THAT THIS ORDER BE ENDED. UNTIL THE COURT ALLOWS SUCH A REQUEST AND "VACATES" THIS ORDER, IT WILL REMAIN IN EFFECT.

If the plaintiff changes address of residence or workplace, the plaintiff may file a sworn affidavit stating that new address, and this Order may be reassued by the Clerk-Magistrate or Register of Probate with that new address in Item 3 or 5 without further Order of the Court.

For good cause, either the plaintiff or the defendant may request the Court to modify this Order before its scheduled expiration date.

TO ANY OFFICER OF THE POLICE DEPARTMENT TO WHICH THE COURT HAS DIRECTED THIS ORDER

PURSUANT TO G.L. c. 209A, § 6, THIS ORDER SHALL BE ENFORCED BY ANY LAW ENFORCEMENT OFFICER IN THE COMMONWEALTH WHO IS AWARE OF OR SHOWN A COPY OF THIS ORDER. IF SERVICE ON THE DEFENDANT HAS NOT YET BEEN MADE, ANY LAW ENFORCEMENT OFFICER SHALL ADVISE THE DEFENDANT OF THE TERMS OF THE ORDER AND THEN SHALL ENFORCE IT.

The YELLOW COPY of this Order must be served on the defendant immediately. Please return the GREEN COPY of this Order to the court with your return of service prior to any scheduled hearing date, or new service may be required.

The BLUE COPY of this Order is for your records.

"Whenever the court orders . . . the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order . . . forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant . . . The law enforcement agency shall promptly make its return of service to the court.

"Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order."

G.L. c. 209A, § 7

RETURN OF SERVICE

I certify that I have served a copy of this Order upon the defendant named in this Order by:

- ☐ delivering a copy in hand to the defendant.
- ☐ leaving a copy at the defendant's last and usual address as shown in this Order.
- ☐ Other (specify): _____

☐ I was unable to make service because: _____

SIGNATURE OF OFFICER MAKING SERVICE X _____		DATE & TIME OF SERVICE
PRINTED NAME OF OFFICER MAKING SERVICE	TITLE/RANK	POLICE DEPARTMENT

ATENCIÓN ESTE ES UN AVISO OFICIAL DE LA CORTE. SI USTED NO SABE LEER INGLÉS, OBTENGA UNA TRADUCCIÓN
 ATTENTION CECI EST UNE ANNONCE OFFICIALE DU PALAIS DE JUSTICE SI VOUS ÊTES INCAPABLE DE LIRE ANGLAISE OBTENEZ UNE TRADUCTION
 ATTENZIONE IL PRESENTI È UN AVVISO UFFICIALE DAL TRIBUNALE SE NON SAPETE LEGGERE IN INGLESE, OTTENETE UNA TRADUZIONE.
 ATENÇÃO ESTE É UM AVISO OFICIAL DO TRIBUNAL SE NÃO SABE LER INGLÊS, OBTENHA UMA TRADUÇÃO
 LƯU Ý ĐÂY LÀ THÔNG BÁO CHÍNH THỨC CỦA TÒA ÁN. NẾU BẠN KHÔNG ĐỌC ĐƯỢC TIẾNG ANH HÃY TÌM NGƯỜI DỊCH HỖ

注意：此份表格係官方文件。如果您不諳英文的話，可向法庭官員索取中文翻譯。

PLAINTIFF'S
NAME _____

DEFENDANT'S

NAME _____

AND

ADDRESS _____

**VIOLATION OF
THIS ORDER IS
A CRIMINAL
OFFENSE**
punishable by
imprisonment
or fine or both.

FILE AND ADDRESS OF COURT

☐ **A. THE COURT HAS ISSUED THE FOLLOWING ORDERS TO THE DEFENDANT:** (only items checked shall apply)

☐ This Order was issued without advance notice because the Court determined that there is a substantial likelihood of or immediate danger of abuse.

☐ This Order was communicated by telephone from the judge named below to:

Police Dept: _____

Police Officer: _____

- ☐ 1. YOU ARE ORDERED NOT TO ABUSE THE PLAINTIFF by harming or attempting to harm the plaintiff physically, or by placing the plaintiff in fear of imminent serious physical harm, or by using force, threat or duress to make the plaintiff engage in sexual relations unwillingly.
- ☐ 2. YOU ARE ORDERED NOT TO CONTACT THE PLAINTIFF or any child(ren) listed below, either in person, by telephone, in writing, or otherwise, either directly or through someone else, and to stay at least _____ yards away from them, unless you receive written permission from the Court to do otherwise.
- ☐ 3. YOU ARE ORDERED IMMEDIATELY TO LEAVE AND STAY AWAY FROM THE PLAINTIFF'S RESIDENCE which is located at:

The Court also ORDERS you: (a) to surrender any keys to that residence to the plaintiff, (b) not to damage any belongings of the plaintiff or any other occupant, (c) not to shut off or cause to be shut off any utilities or mail delivery to the plaintiff, and (d) not to interfere in any way with the plaintiff's right to possess that residence, except by appropriate legal proceedings.

☐ If this box is checked, the Court also ORDERS you immediately to leave and remain away from the entire apartment building or other multiple family dwelling in which the plaintiff's residence is located.

- ☐ 4. PLAINTIFF'S ADDRESS IMPOUNDED. The Court ORDERS that the address of the plaintiff's residence is to be impounded by the Clerk-Magistrate or Register of Probate so that it is not disclosed to you, your attorney, or the public.
- ☐ 5. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF'S WORKPLACE which is located at: _____
- ☐ 6. YOU ARE ORDERED TO SURRENDER CUSTODY of the following child(ren) to the plaintiff:

N A M E	_____	DATE OF BIRTH	_____
	_____		_____
	_____		_____
	_____		_____

- ☐ 7. YOU ARE ORDERED TO PAY SUPPORT for ☐ the plaintiff ☐ and the child(ren) listed above, at the rate of \$ _____ per ☐ month ☐ week, beginning _____, 199 ____ ☐ directly to the plaintiff. ☐ through the Probation Office of this court. ☐ through the Massachusetts Department of Revenue.
- ☐ 8. YOU ARE ORDERED TO COMPENSATE THE PLAINTIFF for \$ _____ in losses suffered as a direct result of the abuse, to be paid in full on or before _____, 199 ____ ☐ directly to the plaintiff. ☐ through the Probation Office of this court.
- ☐ 9. YOU ARE ALSO ORDERED _____

DATE OF ORDER	TIME OF ORDER <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	EXPIRATION DATE OF ORDER	NEXT HEARING DATE at ____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. in Ctroom _____
---------------	---	--------------------------	---

The above Order expires on the expiration date indicated above. A hearing on whether to continue and/or to modify this Order will be held on the date and time indicated.

SIGNATURE OR NAME OF JUDGE

☐ **B. PRIOR COURT ORDER EXTENDED.** After a hearing at which the defendant ☐ appeared ☐ did not appear, the Court has ORDERED that the prior Order dated _____, 199 ____ shall continue in effect without change until the expiration date below.

DATE OF ORDER	TIME OF ORDER <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	EXPIRATION DATE OF ORDER	NEXT HEARING DATE at ____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. in Ctroom _____
---------------	---	--------------------------	---

The above Extension of Order expires on the expiration date indicated above. A hearing on whether to continue and/or modify this Order will be held on the date and time indicated.

SIGNATURE OR NAME OF JUDGE

The plaintiff must appear at scheduled hearings, or this Order may be vacated. The defendant may appear, with or without an attorney, to oppose an extension or expansion of this Order. If the defendant does not appear, an extended or expanded Order may remain in effect for up to one year.

☐ **C. PRIOR COURT ORDER VACATED.** This Court's prior Order is vacated. Law enforcement agencies shall destroy all records of such Order.

DATE

SIGNATURE OR NAME OF JUDGE

FIRST OR ADMINISTRATIVE JUSTICE

A true copy, attest:

WITNESS

(Assistant) Clerk-Magistrate/(Assistant) Register of Prob.



WILLIAM F. WELD
Governor

THOMAS C. RAPONE
Secretary of Public Safety

The Commonwealth of Massachusetts Massachusetts Criminal Justice Training Council

41 Terrace Hall Avenue
Burlington, MA 01803-3499

(617) 727-7827

FAX: (617) 229-6054



DONALD N. MAIA
Chairman

WILLIAM D. BAKER
Executive Director

Officer Survival Handbook

Handouts

Number	Title
1	"Accumulated Statistics: California, New York, PPCT, and the FBI"
2	"Chart on drug and alcohol use by law enforcement officer killers"
3	"Summary of Deadly Force in Massachusetts"
4	"FBI Killed in the Line of Duty victim officer profile"
5	"Do not go quietly into that good night"

Video Tapes

Number	Title
1	"Inmates practicing escape techniques and knife attacks on officers"
2	"Constable Lunsford's murder on tape"
3	"Sparrow hit man"
4	"Trooper Lopez"
5	"Ultimate Survivors"

Accumulated Statistics

FBI Uniform Crime Reporting Unit

40% of law enforcement officer murders occur during arrest situations/crimes-in-progress

68% of law enforcement officers killed in the line of duty are killed in reduced light hours

77% of the killers of law enforcement officers were under the influence of drugs, alcohol, or both

49% of the law enforcement officers killed in the line of duty were single manned units

The Commission on Peace Officer Standards and Training, State of California

25% of law enforcement officers involved in lethal force confrontations used cover when it was readily available

20% of law enforcement officers killed in the line of duty were killed by their own or their partners weapon

37% of law enforcement officers killed in the line of duty were wearing body armor

63% of law enforcement officers killed in the line of duty had prior knowledge that there was a weapon involved

74% of law enforcement officers killed in the line of duty were 0-8 feet from the subject

New York Police Department Statistics by Peter Tarley

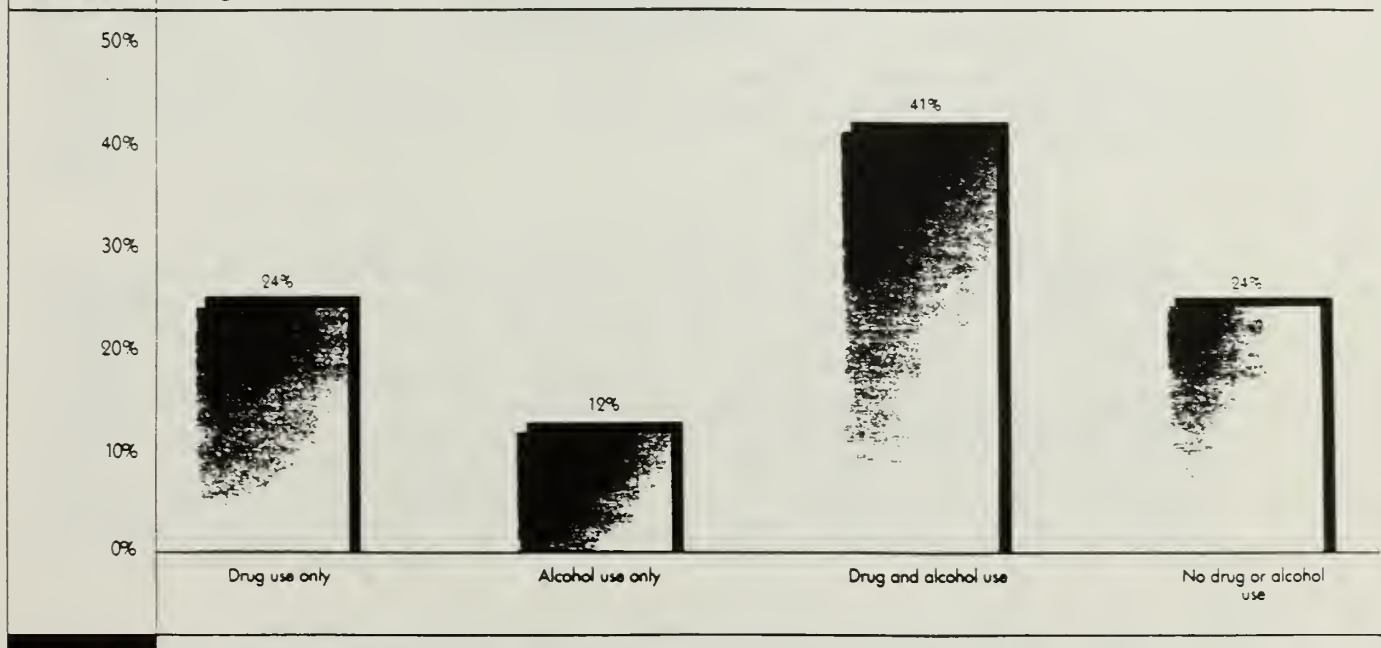
15% of shots fired by law enforcement officers during lethal force confrontations hit the intended target

Lethal force confrontations typically last 4 seconds

84% of law enforcement officers shot survived the attack

P.P.C.T. Management Systems Inc.

67% of resistance that law enforcement officers encounter occurs during handcuffing

FIGURE 9**Drug and Alcohol Involvement of Offenders at Time of Incident**

Use: buying, selling, or using of a substance
Source: FBI Study

DEADLY FORCE IN
MASSACHUSETTS

MICHAEL CALLAHAN
PRINCIPAL LEGAL ADVISOR
FEDERAL BUREAU OF INVESTIGATION
BOSTON, MASSACHUSETTS
NOVEMBER, 1992

1. Commonwealth v. Klein, 372 Mass. 823, 363 N.E. 2d 1313 (1977). On 8/1/73, the defendant, a local dentist, shot and wounded two men after they had broken into a drug store located across the street from his home. The burglary occurred at night and the defendant called the police and then went outside with a pistol to confront the suspects. The defendant told police that he intercepted the burglars as they left the store and told them to stop or be shot. He said one suspect threw cigarettes at him and he fired, hitting one of them. The suspects ran back into the store and emerged again seconds later. The defendant fired several shots at them as they were running away along side the drug store.

The defendant was later indicted for assault and battery with a dangerous weapon. Defendant was found guilty after a jury trial. The Supreme Judicial Court reversed the conviction because it expanded the use of deadly force rules for the Commonwealth for the first time and did not believe it fair to find the defendant guilty for violating newly expanded rules. The Court approved of the trial judge's jury charge and believed that the jury returned the correct verdict in response to that charge. The Court stated that the central issue was whether the defendant was justified in using deadly force and defined deadly force as force intended or likely to cause death or great bodily harm.

The defendant argued before the Court that he was entitled to a directed verdict of acquittal on self defense grounds. The Supreme Judicial Court disagreed and approved of the trial judge's jury charge which informed the jury that self defense with a dangerous weapon is permissible when the person using the weapon had a reasonable apprehension (fear) of great bodily harm and a reasonable belief that no other means would suffice to prevent such harm. The Court approved the jury's rejection of self-defense claims on the basis of the evidence which disclosed that the defendant shot the men as they were running away from him.

The defendant next argued that deadly force was justified to prevent the escape of the two suspects. In responding to this claim, the Court first observed that it had never before clearly set limit's of an arresting citizen's right to use deadly force. The Court decided to apply all relevant provisions of the Model Penal Code in reaching it's decision on whether deadly force is appropriate when a private citizen attempts to apprehend a fleeing felon. The Court adopted Section 3.07 (Use of Force in Law Enforcement) of the Model Penal Code as the law in Massachusetts on this issue.

The court set forth the relevant language of Section 3.07 as follows:

"The use of deadly force is not justifiable under this Section unless:

- (1) the arrest is for a felony; and
- (2) the actor believes the force employed creates no substantial risk of injury to innocent persons; and
- (3) the actor believes that:
 - (a) the crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or
 - (b) there is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed.

The Court ruled that the defendant's shooting of persons fleeing from a felony property crime was inappropriate under the Model Penal Code which the Court adopted for the Commonwealth in fleeing felon cases.

2. Julian v. Randazzo, 403 N.E. 2d 931 (1980).

On July 5, 1976 two Medford Police officers received a radio report of a hold-up. A short time later they began pursuit of three suspects in the get-a-way car. A high speed chase followed in which shots were fired from the fleeing car. Eventually, the suspect vehicle spun out and stopped. The suspects ran and the officers chased them on foot. Officer RANDAZZO fired twice and the plaintiff, JULIAN, an innocent bystander, was hit by one of these bullets in the elbow. The victim sued Officer RANDAZZO for assault and battery. The jury returned a verdict for RANDAZZO and the plaintiff appealed.

The Supreme Judicial Court reversed because the jury was allowed to consider a police report which the Court ruled had been improperly admitted as evidence. The Court approved the trial judge's charge to the jury on the use of deadly force by a police officer. The Court adopted the same standard regarding use of deadly force in the fleeing felon context that it had articulated in Commonwealth v. Klein, 372 Mass. 823 (1977). Therefore, the deadly force for fleeing felons standard which appears in Section 120.7 of the Model Penal Code (identical to Section 3.07 set forth in Klein) was adopted by the Court for sworn police personnel. The Court set forth the appropriate provisions of Section 120.7 as follows:

"...The officer may use deadly force...only if (a) the arrest is for a felony; and (b) the officer reasonably believes that the force employed creates no substantial risk to innocent persons; and

(c) the officer reasonably believes that:

- (1) the crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or
- (2) there is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed.

Since the Court approved the trial judge's jury charge on use of deadly force on an escaping felon, absent the admission of the improper police report, the Court would have approved of the jury verdict in favor of RANDAZZO and would have approved of his use of force in the circumstances of this case.

SUMMARY OF DEADLY FORCE IN MASSACHUSETTS

Use of deadly force in Massachusetts is governed by the principles articulated in both Klein and Randazzo. These principles can be broken down into two distinct categories which involve self defense situations and escape prevention.

A. SELF DEFENSE: Person using weapon must have:

- (1) a reasonable apprehension (fear) of great bodily harm and
- (2) a reasonable belief that no other means would suffice to prevent such harm.

B. ESCAPE PREVENTION: Person using weapon may use deadly force to prevent escape if:

- (1) the arrest is for a felony; and
- (2) the officer reasonably believes that the force used creates no substantial risk to innocent persons; and
- (3) the officer reasonably believes that:
 - (a) the crime for which the arrest is made included the use or threatened use of deadly force; or
 - (b) there is a substantial risk that the arrestee will cause death or serious bodily harm if his arrest is delayed.

Table 6
Behavioral Descriptors of Victim Officers

Friendly to everyone
Well-liked by community and department
Tends to use less force than other officers
felt they would in similar circumstances
Hard working
Tends to perceive self as more public
relations than law enforcement
- service oriented
Uses force only as last resort
- peers claim they would use force at an
earlier point in similar circumstances
Doesn't follow all the rules, especially in
regard to:
- arrest
- confrontation with prisoners
- traffic stops
- does not wait for backup
(when available)
Feels he/she can "read" others/situations and
will drop guard as a result
Tends to look for "good" in others
"Laid back" and "easy going"

Source: FBI Study

Defensive Tactics

TACTICAL COMMUNICATIONS



Cooperation through intimidation is short lived.

YOUR KEY TO OFFICER SURVIVAL
BOTH IN AND OUT OF THE STATION



The most powerful weapon in the world rests on your shoulders.

A N S

APPEARANCE

A USE OF FORCE ?

A METHOD OF GAINING RESPECT ?

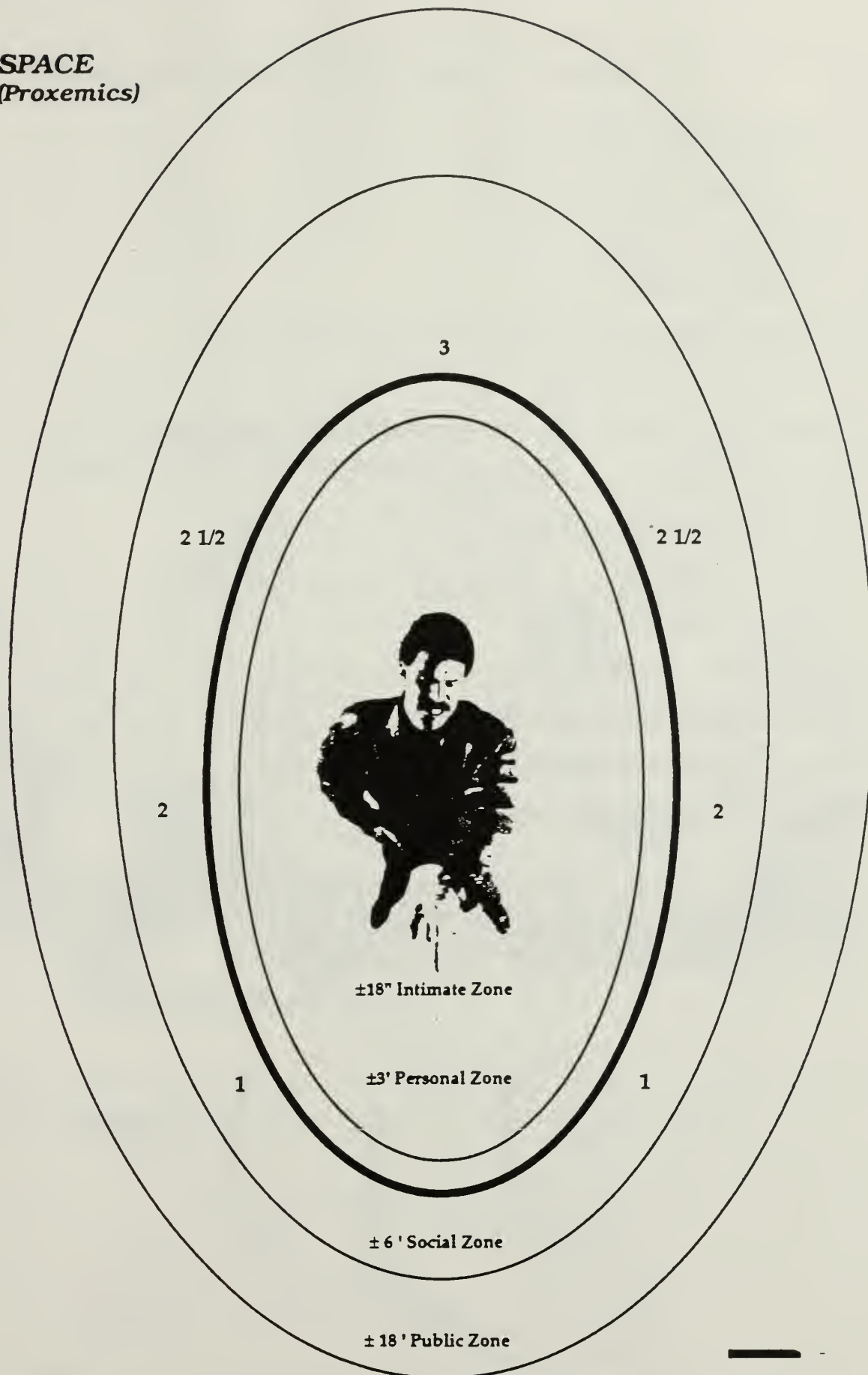
A METHOD OF LOSING RESPECT ?



IT'S UP TO YOU AND IN YOUR

CONTROL

SPACE
(Proxemics)



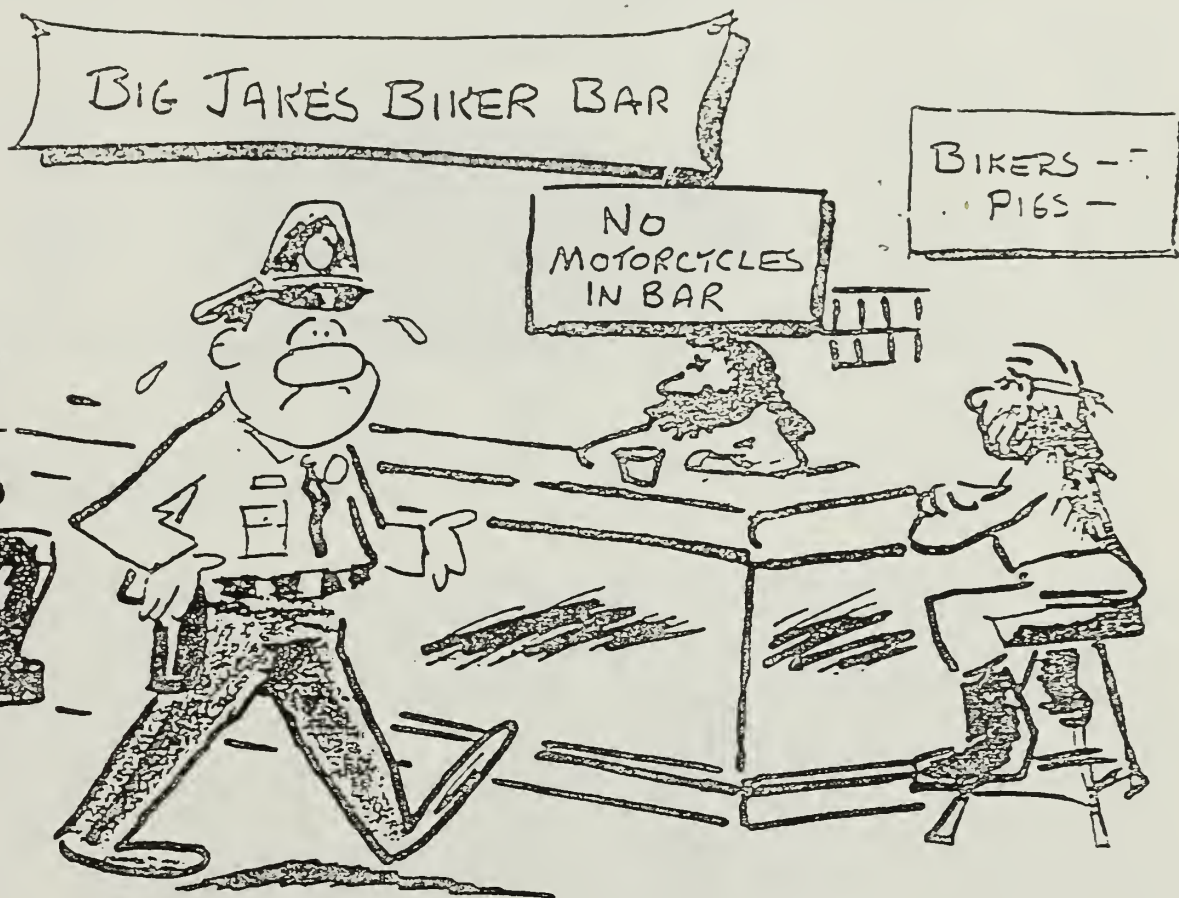
NON VERBAL OR PRE-ATTACK KINESIOLOGICAL CLUES

- * BLADED FOOT POSITION
- * HIGH HAND SET
- * SHOULDER SHIFT
- * TARGET GLANCE
- * DIRECTIONAL LOOK- SIDE TO SIDE ESCAPE ROUTE
- * 1000 YARD STARE
- * BOBBING UP AND DOWN OR ROCKING BACK AND FORTH
- * FACIAL WIPE
- * CONSPICUOUS IGNORING
- * HEAD DIPS DOWN
- * CEASING ALL MOVEMENT
- * PHYSICAL CROWDING
- * EXCESSIVE EMOTIONAL ATTENTION
- * EXAGGERATED MOVEMENT
- * REPETITIVE QUESTIONING

THE ABOVE LISTED BEHAVIORS ARE EITHER SUBJECT BEHAVIOR WARNING SIGNS OR PRE ATTACK POSITIONING SIGNS. IF ANY OF THESE ARE NOTICED THE OFFICER SHOULD HEIGHTEN HIS/HER STATE OF AWARENESS AND TAKE HIS/HER SAFETY INTO CONSIDERATION.



I could have...I should have...I would have...doesn't mean a damn thing after you've lost the confrontation.



Fear and danger are real, but they both can be
vanquished.

A N S

SUMMATION EXERCISE

SOFTEN

S- _____

O- _____

F- _____

T- _____

E- _____

N- _____



Cooperation through intimidation is short lived.

A N S

The Tactical Retreat

By Steve Albrecht,
San Diego Police (Reserve)

The title of this article should tell you

this is not an easy subject on which to write. Look at it again. You say, "Okay, 'Tactical' is a good start. I like tactical

CYBORG ■■■■ | 21

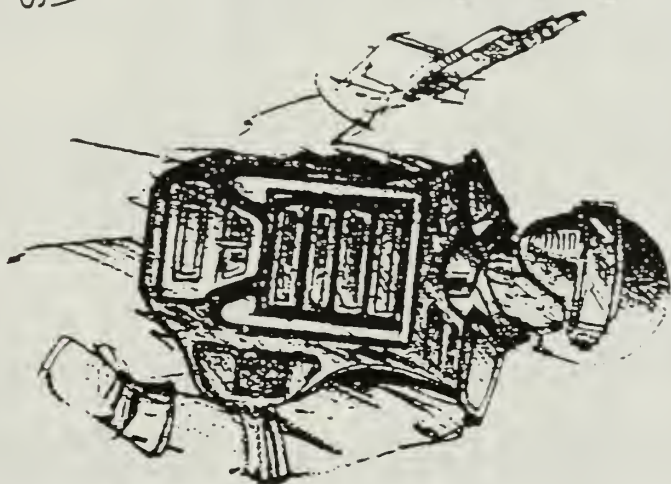
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stuff. But what is the word "Retreat" doing in a police officer's safety article?

Throughout the annals of history, dating back to jolly old England where the first constables roamed about the countryside as the official law of the land, we have always known that police officers do not "retreat." Our job is to 1) go in there, 2) kick tail, 3) take names, and not back down or give up until we've done both.

On its face, this is true. We are indeed the last line of defense, the "Thin Blue Line" if you will, between good citizens and crooks. If not us, then who? But let's back up a bit.

"No way," you say to everyone in the locker room. "I don't back away from any street hoods."

"The word 'retreat' you announce proudly, is not in my vocabulary." One riot, one cop and all that sort of talk.

The term "Tactical Retreat," as I understand it, has nothing to do with raising white flags or putting our heads in the sand like a band of frightened ostriches.

First, the dictionary definition of the word "tactics" refers to "any skillful method used to gain an end." The same dictionary defines "retreat" as "a withdrawal, as from danger." Put it together and you get "a skillful method used to withdraw from danger." Doesn't that make sense? Now do you see where this concept can apply to police work? If not, consider these examples taken from real life incidents:

Two officers working in one unit drive slowly through a high narcotics

area. Suddenly, a group of 10 to 12 gang members surround their car and begin rock-fighting and banging on the hood and roof with their fists. There is a distinct odor of ether in the air. The officers are effectively trapped in their car for a few brief moments. The driver floors the accelerator pedal and speeds away to safety. The officers regroup and call for cover units to meet them at a "safe staging area." Later, they go back and make arrests. The concept of a Tactical Retreat worked here.

What about this scenario? A Midwestern State Trooper responds to an apparent accident scene. He arrives to find a lone male driver staggering drunk only from a wrecked car. He confronts the driver and attempts to apply handcuffs. Approximately 10 members of this man's family suddenly appear on the scene to "assist" him. (These people had apparently been following the drunk in two other cars.)

The trooper begins to do a 5 minute version of the asphalt tango with the suspect, who is not really "resisting" arrest, but just won't stand still. The trooper fails to use any kind of escort or pain compliance holds to stop the suspect from walking him all around the interstate. At one point, he even drops his handcuffs on the ground. A police teenager gives them back and he finally succeeds in getting one cuff on the suspect's wrist. During this entire charade, several members of the suspect's family placed themselves between the trooper and the suspect, in an attempt

THE PROFESSIONALS



to "shoot things down." Finally, cover units arrive and several other troopers help to get the suspect into cuffs and away from the scene. The Tactical Retreat concept failed miserably here.

What saved this trooper from being disarmed and shot or beaten into unconsciousness by the crowd? His police skills? No. His command presence? No. His use of defensive tactics? No. This trooper owes his survival and under his life to the news camera crew at the scene. They began to film this entire event after witnessing the original accident. Do you think the suspect and his family would have assaulted the officer if their actions weren't preserved forever on video tape? No doubt about it.

Would a Tactical Retreat plan have saved this officer a torn uniform and several long minutes of grief? Yes. Outnumbered 10 to 1, the trooper was not in any position to complete the arrest, time to disengage.

Let's go back to the first scenario with the gang members rocking the officer's car. Answer these questions as you consider whether the officers did the right thing. Were they in a safe position to confront suspects? Did they have enough officers to put the odds on our side? Were the suspects calm or irrational?

Consider these other questions. Were suspects probably high on PCP? The officers have to make an immediate decision as to their safety? Did they employ proper tactical retreat methods? Did they safely make the arrests later?

If you said NO to the first three questions and YES to the last four, you understand the concept of tactical retreat.

Keep in mind that a tactical retreat has many forms. In one set of circumstances it may call for you to leave the scene altogether and in others it may just call for you to stop fighting with the suspect and loosely contain him until more help arrives.

No two street situations are ever the same, but you can use certain guidelines to help your decision-making process. Remember these two rules whenever you feel you may have to make a Tactical Retreat:

Am I winning this confrontation?
Is this worth dying for? (The answer to this question should always be NO, regardless of the circumstances.)

If the answer to the first question is NO, then you need to move on to the next step: Disengage from the suspect and re-evaluate your position.

Consider these additional factors when deciding when to make a Tactical Retreat:

- 1) A sudden assault by the suspect that takes you by surprise.
- 2) Your position with regard to your surroundings (a freeway ramp, a crowded bar, etc.)
- 3) Your perception of what might follow.
- 4) The suspect's ability to use more force.
- 5) Prior knowledge of the suspect's criminal history.
- 6) Any existing injuries or your own physical exhaustion.

If you are experiencing problems with any of these factors, it might be time to "vote with your feet" and get away from the situation.

A Tactical Retreat is not a sign of surrender. It is not an excuse to give up

when a street scene gets too difficult. It is not a hopeless, fail between the legs admission of defeat. It is, however, an alternative for your survival, and it should be a part of your survival plan during all contacts. ■

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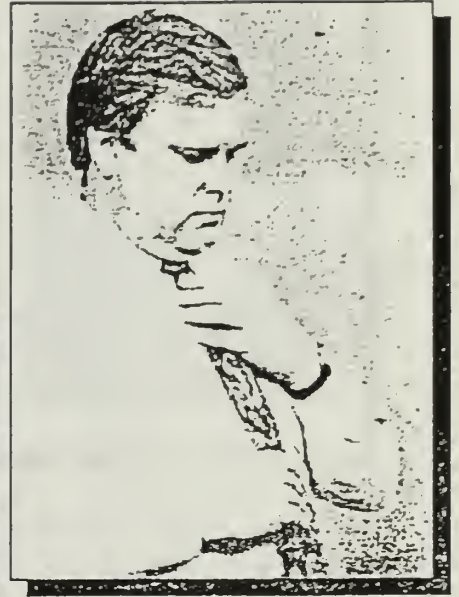
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TURN



Nonverbal Communication

Can What They Don't Say Give Them Away?

By
CHARLES G. BROUGHAM

Today, one of the most important skills necessary to conduct an effective interview is the ability to understand and interpret nonverbal communication. As Voltaire once said, "Words were given to man to enable him to conceal his feelings." With this thought in mind, this article discusses the various forms of nonverbal behavior. It also details the steps that an interviewer should take to examine nonverbal behavior successfully during an interview.

BACKGROUND

Throughout history, people have been aware of nonverbal com-

munication. In fact, as long ago as 900 B.C., one observer wrote the following description of a liar on a piece of papyrus: "He does not answer questions, or gives evasive answers; he speaks nonsense, rubs the great toe along the ground, and shivers, he rubs the roots of his hair with his fingers."¹

More contemporary findings indicate that people have not changed much in 3,000 years.² In 1948, a polygraph examiner named John Reid observed that subjects reacted differently when giving truthful answers as opposed to when they supplied deceptive ones. As a result of his observations, Reid de-

veloped the behavioral analysis interview. During these interviews, Reid observed the criminal's verbal and nonverbal behavior, focusing on how the subject reacted during questioning. He then recorded the answers and nonverbal behavior, such as eye contact, posture, and attitudes. Reid concluded that a subject's behavior during an interview could reveal truthfulness and/or deception.

NONVERBAL BEHAVIOR

Usually, people exhibit certain constant, spontaneous, and involuntary behaviors when interviewed under stressful conditions. Body



“
*...people exhibit certain
 constant, spontaneous,
 and involuntary
 behaviors when
 interviewed under
 stressful conditions.*
 ”

*Sergeant Brougham is a member of the Special
 Functions Division of the Chicago, Illinois,
 Police Department.*

movements (kinesics), body positions (proxemics), facial expressions, physiological symptoms, and paralinguistic reflect these nonverbal behaviors. Interpreting a subject's nonverbal behavior properly could possibly point investigators toward new leads, and hopefully, toward a successful resolution of an ongoing case.

Kinesics—Body Movements

The human body is one of the best sources of nonverbal communication, primarily because it is the least controllable nonverbal channel. A calm, emotionless face, along with active arms, hands, legs, and feet, is a distinctive feature of deception. For example, when witnesses or suspects deceive, they lean forward less and move their legs and feet significantly more than when they are truthful.

Additionally, such gestures as pounding one's fists or stomping one's feet reinforce verbal messages. Gestures may sometimes even replace words, such as when individuals nod their heads up and

down in lieu of the verbal response “yes.”

Hands and arms are also expressive features and often provide critical insight into a person's feelings. Most notable are folded arms. If someone's arms are folded loosely, it may be indicative of relaxation. However, when arms are folded firmly and high across the chest, this may signify refusal or defiance. If this gesture is difficult to interpret, the interviewer should look at the subject's hands to see if they are relaxed or fist-like.

Hand movements, in which the hands are rotated at the wrists, usually indicate uncertainty. When a person is being deceptive, these hand movements decrease and are replaced by shrugs. Additionally, rubbing one's palms is considered a gesture of expectation, while strumming or tapping the fingers is indicative of nervousness and is often associated with deceit. A person making a hand-to-chest gesture is generally recognized as sincere and honest, while a person making a hand-to-mouth gesture is com-

municating self-doubt or may be lying.

Truthful persons tend to gesture away from their body, while liars tend to gesture toward themselves. It has also been found that grooming gestures and clothing adjustments that keep the hands busy may allow the subject a delay in answering questions and allow release of pent-up anxiety. However, although these tendencies are observed easily, they should be considered as only part of a subject's overall assessment.

Proxemics—Personal Distance

In general, Americans have an intimate zone of approximately 6 to 18 inches from the body and a personal zone of about 18 inches to 4 feet. When an interviewer creates a high level of anxiety for a psychologically normal person by invading this personal space, it becomes increasingly more difficult for the subject to lie.³

Successful interviewers create a high level of anxiety by beginning an interview at a comfortable distance while discussing general information. Then, the interviewer moves closer to the subject during questioning and backs off during desired responses. This practice results in the desired effect of mentally programming an individual to cooperate with the interviewer's line of questioning.

Facial Expressions

People have long noticed that the halves of a person's face are not quite identical. One eye may sag a bit, or one nostril may be slightly larger. Such facial asymmetries

become even more pronounced when a person makes a facial expression. Almost invariably, parts of one side of the face will move differently—one side of the mouth or one eye may droop more than the other, or one nostril may flair more.

When facial expressions are spontaneous, muscle movements tend to be about the same on both sides of the face. But, when muscle movements are deliberate, such as when a subject is deceitful, the muscles on the left side of the face move more than those on the right.⁴ An astute observer may be able to use these facial asymmetries and expressions as clues to determine whether a person is being sincere.

This difference between spontaneous and deliberate facial expressions seems to be due to how the brain regulates facial muscles. Spontaneous facial movements bypass the brain's cognitive centers. But, when some people consciously move a part of their faces, the signals to move the muscles go through the cortex, the part of the brain that makes conscious decisions. The part of the cortex that is involved in this process appears to have stronger ties to the left side of the body; hence, the greater movements of facial muscles on the left.⁵

In addition to asymmetrical facial indicators, the face can also reveal some very good clues when combined with other nonverbal behavior. For example, when an individual is being deceptive, internal stress will cause the eye-blink rate to increase significantly from one blink every few seconds to one to two blinks per second. Internal stress may also cause the eyes to

open wider than normal. Avoiding direct eye contact or looking away can provide additional clues to indicate deception.

Physiological Symptoms

When most people lie, a myriad of physiological changes takes place in the body. These changes include perspiration, flushing or paleness of skin, an increase in the pulse rate, and the appearance of veins in the head, neck, and throat.

“*In general, humans experience few problems or anxieties when they speak the truth.*”

Dry mouth and tongue, excessive swallowing, respiratory changes, licking of lips, thickened speech, and stuttering may also occur.⁶ During the interview, any of these indicators should be noted.

Paralanguage

There are times during an interview when what the subject says is less important than how it is said. Paralanguage involves the examination of how a person speaks and of all the characteristics of the voice, except the words. When properly analyzed, variations among the following characteristics can indicate deception:

- Pitch—the highness or lowness of tone
- Loudness

- Rate of speech
- Quality—the sound of the voice
- Special vocalizations—crying, laughing, belching, and especially “breakers” (Breakers, such as a quivering voice or stuttering, are interruptions in speech usually caused by a lack of control or insecurity.)
- Space fillers—“uh-uh” and “um.”

When suspects are deceptive, they will be less fluent and will stutter more. Their answers will also be less plausible, longer, and contain more fillers and more broken and repeated phases.

Attempted deception will also cause the subject to become nervous. This nervousness often results in a high voice pitch, more “breakers,” a slower rate of speech, longer hesitation before answering, and less volunteered information.

Exceptions

It should be noted that exceptions to these applications exist. For example, people who are under the influence of drugs or alcohol, professional or habitual criminals, and people exhibiting antisocial behavior may not exhibit normal nonverbal behavior.

CONDUCTING THE INTERVIEW

Over the years, certain guidelines and tactics have been developed for interviewers to follow in order to conduct a successful interview. Most importantly, the interviewer must be thoroughly familiar with the case and must have specific

objectives for the interview. And, unless the subject is friendly, the interview should be conducted in an area unfamiliar to the subject, preferably in a small room with the windows and blinds closed. It is also important to remove all distracting objects, such as pictures. The subject's chair should be comfortable and should be lower than the interviewer's chair. Both chairs should be approximately 2 feet apart and should face each other.

In order to monitor and interpret a subject's nonverbal communication successfully, the interview should begin with small talk. This builds rapport with the subject and provides an opportunity to observe the person's truthful body language. The interviewer should then pace the individual's verbal behavior by concentrating on and examining the subject's verbal responses. In most cases, this will provide the interviewer with a frame of reference from which to work.

Next, the interviewer should assess the subject's nonverbal behavior by concentrating on gestures, facial expressions, and posture while listening to verbal responses. For example, when people truthfully answer "yes" or "no" to a question, they usually shake their head up and down or from side to side, either subtly or with exaggeration. However, when individuals answer questions in a deceptive manner, their heads usually do not move.

It is important to note that these observations are generalities. Before determining deception, an interviewer should observe a subject's nonverbal responses when telling

the truth. This allows each subject's verifiable nonverbal responses to be calibrated accurately.

Interviewers can also ensure a greater level of success if they consider the subject's behavior in light of the general population, closely examine the subject's own behavior, and compare clusters of the subject's behaviors and their rate of repetition. Interviewers should also have an idea of the subject's frame of reference and should always reserve judgment until after the interview.

CONCLUSION

In general, humans experience few problems or anxieties when they speak the truth. But, when people lie, the mind and body send out involuntary signals that, when properly interpreted, can indicate deception. The "language" of nonverbal behavior is complex and dynamic. And, although a good deal of time, effort, and practice is necessary to become proficient at the technique of reading nonverbal behavior, the investment can be beneficial and very rewarding. ♦

Endnotes

¹ Daniel Goleman, "Can You Tell When Someone Is Lying To You," *Psychology Today*, August 1982, 17.

² Ibid.

³ Ibid.

⁴ Daniel Goleman and Jonathan Freedman, *What Psychology Knows That Everyone Should* (Lexington, Massachusetts: Lewis Publishing Company, 1981).

⁵ Ibid.

⁶ Arthur S. Aubry and Rudolph R. Caputo, *Criminal Interrogation*, 3d. ed. (Springfield, Illinois: Charles C. Thomas, 1980).

⁷ Robert Harnson, "Use of Non-Verbal Clues to Detect Deception," *Law and Order*, September 1986, 58.

Police Officer Safety Video

The New York City Transit Police Department developed a video to promote police officer safety. By filming the video, the department strives to create a safer environment for officers and the public.

The 30-minute program includes messages from more than 30 well-known film personalities, sports figures, and other celebrities who remind officers that they have a responsibility to their families, the public, and themselves to wear safety vests, drive carefully, use seat belts, and be courteous. Each of the segments lasts 10 to 15 seconds.

The video tape, which features over 100 such safety messages, is now available free of charge to Federal, State, and municipal law enforcement agencies throughout the Nation. The video can be used to reinforce safety themes and the importance of safety to officers. Individual messages can also be edited onto departments' existing training videos for use during roll calls.

Agencies may request the complimentary VHS video by writing on department stationery to Leslie J. Kaslof, New York City Transit Police Department, P.O. Box 1312, Bronx, New York 10471-0620.

Cultivating the Practice of Courtesy

By THOMAS J. LANGE, Chairman of the Advisory Board, Pinellas Police Academy and Florida Institute for Law Enforcement, St. Petersburg Junior College, Florida

The practice of courtesy by department members is frequently discussed whenever law enforcement administrators gather. After all, few areas generate such a volume of complaints from citizens. And, while courtesy may seem minor in comparison to issues of honesty, the use of force and other serious matters, the time consumed by complaints of discourtesy—and their cumulative effect on agency image—can hardly be overestimated.

These discussions often reveal frustration over what can be done to improve the practice of courtesy. Chiefs relate how the importance of courtesy is covered in training, how they personally work to set an example, how their departments have rules that sanction discourtesy and how they have applied these sanctions in specific cases. While all these are important elements of any meaningful program to encourage the practice of courtesy, we may be overlooking our failure to explain to our members exactly what we mean by "courtesy."

At first glance, courtesy may seem to be such an elementary concept that it needs no explanation. Like the Supreme Court justice dealing with pornography, we may not be able to define it but we "know what it is when we see it." Unfortunately, this is not much help to our members, many with little experience, who are charged with practicing courtesy in the stressful environment of law enforcement. Quite often, all we give them is a rule that makes it a disciplinary matter for any member to practice *discourtesy* to a person with whom the employee comes in contact during the performance of his duties. I believe we need to go further than this, and explain to members what we mean by courtesy in the context of their duties.

I prepared the following guidelines during my tenure as chief of police in St. Petersburg Beach to address the most common applications of courtesy in law enforcement. They are offered here as a basis for discussion of similar guidelines in your own agency.

Sample Courtesy Guidelines

Policy. Courtesy must be practiced by

The best way to handle an insult is either to ignore it or to quietly point out that *you* are not insulting *him*. Focus your own behavior on completing the business at hand. Remember: We have no obligation to correct behavior that is merely obnoxious.

department members in order to earn the respect and support of the community. In a free society, any government agency that fails to earn and maintain this support cannot hope to attain its goals. Courtesy encourages cooperation and wins respect; discourtesy breeds obstruction and contempt. While police employees often encounter situations that may make formal courtesies impractical, the nature of the work is never an excuse for discourtesy.

Guidelines. The following sections outline some specific areas of courtesy and the behavior expected of all department members.

- **Introductions.** Whenever practical, all members are expected to identify themselves by title and name at the start of any contact with a citizen. Greetings such as "good morning" or "good afternoon" should be included whenever appropriate. Remember that greetings are the first and best opportunity to set the tone of any encounter. The more cordial (or at least neutral) an encounter can be kept, the more the participants can concentrate on the business at hand.

- **Tone of voice.** Speech is the primary communication tool used by department members. Used to request or give

information, it is also the tool most frequently used to control situations. While conscious thought is usually given to the content of speech, the tone of voice is often left to chance. Members should always be aware of voice tone and use it to their advantage. The voice should not betray anger, contempt, sarcasm or other tones that are likely to provoke opposition.

- **Voice volume.** Clearly there are times when members must raise their voices or issue an unmistakably audible command or be heard over background noise, but care should be taken to avoid raising voice volume out of emotion or merely because another party has raised his voice. Shouting matches are rarely productive and often give the impression that the department member is losing control of the situation. Often the best response to a loud voice is a quiet reply. It demonstrates that the member is not losing his composure and may encourage the other party to lower his own voice. It also preserves a clear difference between the behavior of the department member and the person with whom he is dealing.

- **Forms of address.** Members should not address citizens by first name unless the circumstances clearly make it appropriate. Nicknames or diminutives ("Skippy," "Sydney," "Pops," "Junior," etc.) are never appropriate. The use of honorifics, such as "Mister" or "Miss," is encouraged whenever a person is addressed by his or her last name. If the last name is not known, members should refer to the party as "sir," "ma'am," etc.

- **Body language.** While employees must often assume stances that are required to preserve safety during encounters with the public, care must be taken to avoid mannerisms that needlessly provoke negative reactions from citizens. Resting a hand on the butt of a holstered weapon or gesturing with a nightstick or flashlight are examples of such behavior. Facial expression also has a great influence on the tone of any exchange, so employees are urged to avoid the display of negative emotions as much as possible under the circumstances. This does not mean that

employees must adopt a "wooden" face, devoid of all expression. The display of friendly, or at least neutral, expressions is encouraged as an effective way to gain the cooperation of the public.

- **Crowding.** Most persons in our society are threatened or offended by intrusion into their personal space—the area immediately around their bodies—unless they have consented to the intrusion. Most police officers understand that this is both an area of danger and a powerful tool that can be used to influence behavior. Employees must restrict this practice to situations that clearly call for such intrusions: physical arrest, separating opponents, weapons frisk, seizing evidence, controlling a potential disturbance, etc. It should only be done on purpose and for a specific, legitimate reason—not unconsciously or for merely personal reasons.

- **Personal opinions.** A frequent error committed by police employees is the expression of inappropriate personal opinions. While employee opinions are important in exercising discretion, offering advice to the public, selecting options and other areas of judgment, employees must never publicly express their personal opinions on the importance of a complaint, the social worth of any citizen, the performance of public officials and employees or other inappropriate subjects. It is particularly important to guard against the expression of such opinions through facial expression, tone of voice, body language or other conduct.

- **Profanity.** The use of profanity is never appropriate.

- **Demeriting remarks.** Any remark or form of address that ridicules a citizen, expresses contempt or is calculated to provoke anger is never appropriate.

- **Provocation by citizens.** Few vocations require more self-control than law enforcement. It is an absolutely essential trait for all department members. Anyone not able to develop and practice self-control should find another line of work as soon as possible for his own good, the good of the department and the good of the community.

Citizens often direct anger and frustration against police employees, and there is a constant temptation to reply. Do not give in to it. There is nothing to gain from replying to insults, and much to lose if the employee engages in offensive behavior or speech. It is important to preserve a clear distinction between the proper behavior of employees and the offensive behavior of citizens.

The best way to handle an insult is either to ignore it or to quietly point out to the citizen that *you* are not insulting *him*. Focus your own behavior on completing the business at hand. If you are gaining information that is being given in an insulting manner, concen-

trate on collecting the information and ignore the manner as much as possible. If a legitimate request or question is asked in an insulting manner, react only to the legitimate content of the request and ignore the insult. Remember: We have no obligation to correct behavior that is merely obnoxious. It is futile even to try.

There will be times when insulting behavior by a citizen may incite public disturbance or become a challenge to the authority of an officer. Calm and careful warnings are then appropriate, so that the citizen will have an opportunity to moderate the behavior before an arrest becomes necessary. This is an important test of an officer's ability to control a situation, while simultaneously controlling himself. The officer must not allow his own emotions to aggravate the situation or later become an issue in court or other proceedings.

More often, insulting behavior by a citizen will merely make our job harder to complete, but will not create a hazard to the police employee. While handling a call for service, making an arrest, investigating a crime, collecting evidence, etc., we must never allow ourselves to be diverted from duty by obnoxious behavior. At such times the employee may have to merely endure, if the citizen will not moderate their behavior upon request.

This does not mean that employees must always accept every abuse short of an offense that calls for an arrest. If the work at hand is something that clearly allows for a delay, the employee may elect to break contact with the offending citizen if he refuses to moderate his behavior. Such actions must be clearly explained to the citizen, as should the means to remedy it.

- **Explaining what we do.** The most frequently overlooked courtesy is the simple act of explaining what we are doing. We tend to forget that most citizens are unfamiliar with laws, police work and procedures within the criminal justice system. Just think how hard it is for us to keep up with all the changes in our work, and you can imagine how confused the average citizen must be when dealing with the system we represent. When people are left ignorant of the reason for our actions, they may assume we have acted out of ignorance, arrogance or caprice. This almost always provokes suspicion, anger or reduced willingness to cooperate.

Sometimes we are not free to explain our actions. To do so might violate a confidence, interfere with a tactical situation or take more time than we can afford. In most cases, however, explanations are not only possible, they are preferred. While a traffic violator who is receiving a citation should not be lectured, the officer can explain the violation if the citizen is at all receptive.

A citizen who requests an officer to be contrary to law or policy should not merely be refused; the officer should attempt to explain the law or policy. A person who is subjected to a delay, etc., interrogation or warrant check should be given an explanation whenever practical.

Remember: It is both easier and more effective for you to explain your actions to a citizen than it is for a superior to try to explain them in your behalf.

- **Listening.** The complaint most frequently received by any department is that an employee showed no consideration for the citizen's feelings. Such complaints often describe the employee's actions as "cold," "hard," "mean," "arrogant," "uncaring," "obnoxious," "treated me like a criminal," "refused to listen to me," or "cut me off when I tried to explain." These comments come from victims and violators alike. When examined, they all have one thing in common: the citizen felt that the employee would not even pay him the courtesy of listening to an explanation.

Now, it is true that these persons sometimes confuse an explanation with an argument. But it is also true that in many cases the employee simply did not want to take the time to listen, or felt that listening would be interpreted as a weakness or lack of resolve. While circumstances may not always allow police employees to listen at great length, time invested in listening is generally more productive than time spent talking. Whenever practical, employees should give citizens an opportunity to express their views and acknowledge that they have been heard.

Remember: It is possible to listen to and acknowledge what is said without approving the content or excusing the behavior being discussed.

When people have something to say they *will* be heard. If you don't take the time to listen, they will find someone else who does.

Conclusion

None of the preceding guideline means that department members must sacrifice safety or become the passive recipients of endless abuse. Employees will occasionally have to speak sternly to citizens in order to discharge their duties. Some members of the public will become unruly or complain, regardless of the consideration or restraint shown by the department member. However, department members are expected to use the most courteous approach to the citizen and the circumstances will allow.

If all this is too complicated to remember in the field, just remember that the way to avoid trouble is to speak to citizens as you would speak to your superiors. *

Defensive Tactics As Communication

How to keep your house if you're involved in a use of force incident

BY JOSEPH K. O'LEAR

First it was firearms. Now, defensive tactics is taking its turn as the courts narrow the scope of a police officer's discretionary response.

There has been a strong shift to enforcing standards in nonlethal force options. Florida has published lesson plans of approved techniques that are acceptable within guidelines. If a police officer does not use those techniques, he may stand alone in court.

"Hand-to-hand" is traveling the path of standardization, much the same way as first aid and firearms. The time when a karate or judo expert in the department taught his fellow officers how to take care of themselves is long gone. This is not a bad thing. It is a sign of our becoming more professional.

Many street adaptable systems are filling the gap. Even those systems which are well defined, such as Florida's Department of Law Enforcement lesson plans or Bruce Siddle's Pressure Point Control Tactics system, give some latitude for the dynamic and changing environment on the street. These systems, however, focus on the middle to more violent ends of the use of force options.

The next step is greater emphasis on the lower end of the continuum—not in opposition to the progress that has been made on the hands-on portion of the continuum but as additional training. Teaching officers these lessons can provide workable response alternatives to physical confrontations.

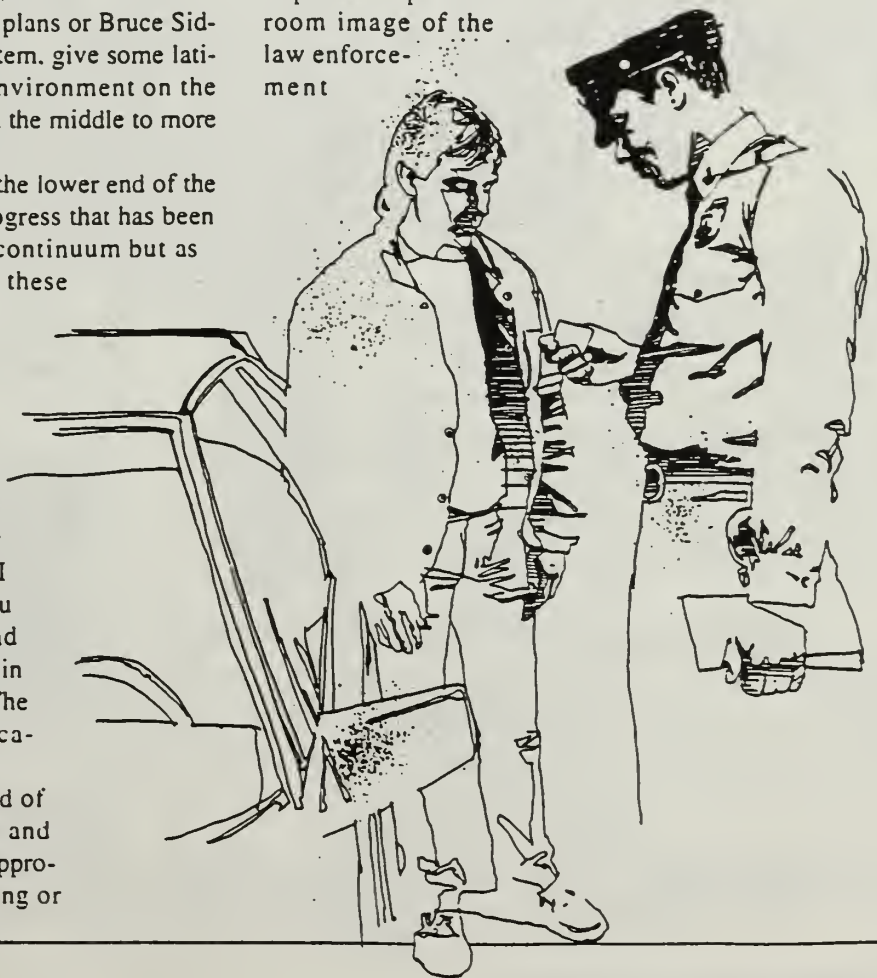
It is very important to clarify to officers the philosophy behind use of force, which is actually three philosophies. First is the bad guy's philosophy. "You got it. I want it. I take it." Second is the approach that was taught when many senior officers started, the "You get me. I get you" approach: I don't touch you first, but, if you touch me you are dead meat. Today that approach will put you in court on civil, if not criminal charges. The third approach is: "Tactile Communication."

I define defense tactics as: A method of communication including both tactile and non-tactile techniques to be used on an appropriate continuum to convey an escalating or

de-escalating response alternative to a situation. Viewing defensive tactics as a method of communication which may or may not include physical contact has many advantages. It is situation dynamic. Like any form of communication, the goal is to reach a mutual understanding.

Taking a communications approach is not meant to replace standard use of force continuums. Continuums/Matrixes for defining the escalation and de-escalation for use of force applications have been proven to be court defensible.

Looking at use of force as a form of communication highlights the non-tactile options for force within the existing response options. It emphasizes the verbal and psychological responses which may help avoid a physical confrontation. It can also significantly improve the public and court room image of the law enforcement





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response, which can translate directly into dollar savings in medical bills, workman's compensation, sick leave, property damage, legal fees and negative sanctions by the courts.

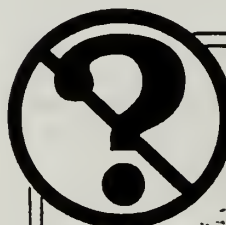
Generally, defensive tactics training programs justifiably emphasize hands-on control. This is time well spent, and in most departments should be increased and on a regular basis. Sadly, the forms of control which are psychological or verbal in nature are not as strongly taught. Some physical confrontations could be avoided by using an approach which included them.

This is not to be interpreted as meaning we need to "get soft" to the point of endangering ourselves. It is only to say that the objective of going home at the end of shift, or completing an arrest, sometimes can be better supported by not physically fighting.

If that is not possible, tactics must be applied which will be swift and effective in gaining full control. I emphasize when teaching defensive tactics the best approach is not to fight. However, if you have no other option, only fight once.

That is, gain full and effective control of the offender immediately with whatever approved technique you use, on the appropriate level of the use of force continuum. Practice it until it becomes natural. Apply it dynamically, with determined intent, so that the officer finishes in control.

Emphasize the lower levels of the continuum involving sociological, psychological, verbal, strategic and body language skills. By recognizing and developing these five basic skill areas, many physical confrontation situations can be



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avoided. The communication aspects of the continuum lock in the verbal elements.

There is often officer resistance until it is explained from their view point. There is also a predictable response from officers who do not have an appreciation for the legal process during many of the most popular training tapes. Typically an officer is attacked and responds with the appropriate response tactic. He also gives a loud verbal command. "Sir! Get down!" or "Sir! Don't Move!" There are always comments from those watching the tape, "Yeah, like I am going to call that animal 'sir'." This provides a teaching opportunity.

Why would we call the subject sir? Out of mutual respect? Not likely, he just tried to cause the officer harm. There are three reasons why this address is both instructive and important. First, we are always preparing a case to win in court. Putting in your report and being able to testify in open court that you said, "Sir, get down" presents a very defendable image to the jury. In court, the unprofessional image often translates into dollars at suit.

The second reason is for safety. It may be that the main threat is not from the suspect so much as it is from the on lookers. If it is perceived that the officer's response is malicious or inappropriate, the chance of a rescue response by the crowd, or the subject's friends, are much higher. The officer may find that instead of containing the incident, he now is attacked by the crowd, or the media at 11:00.

The third reason, and perhaps most important, is it assists in the continual process of self control.

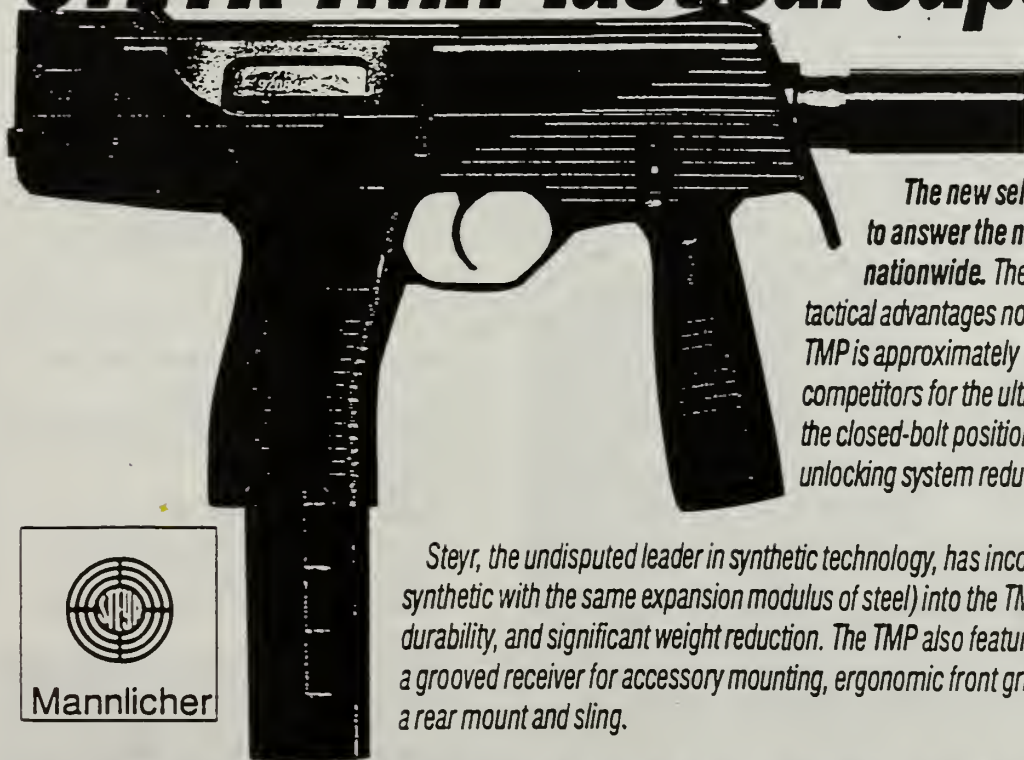
When an officer's life is threatened, the natural instinctive fight or flight response kicks into overdrive. Adrenalin dumps into his system. However, in spite of biology and psychology, the law holds the officer fully responsible if he does not control himself fully in the escalation and de-escalation of force.

This seems unfair, unrealistic, and in opposition to the psychological and physiological forces at work in the mind and body of the officer. Yet, like it or not, this level of control is the expectation of the court, media and population served.

The reasonable man defense has changed, becoming more like what is reasonable for a trained professional. Society is becoming no more tolerant of human error on the part of law enforcement as it is toward a medical doctor who makes a surgical error and loses the patient. However, in the operating room, the doctor's life is not at eminent risk. Although there has been a conservative swing in favor of law enforcement, recent media events, political changes, and projected court appointments may slow or reverse that swing.

Several things can help officers respond in a polished and professional manner. Mainly, they should practice using professional verbal commands during training and visualization. There must also be more detailed training both in background and communication skills based on sound psychology and sociology. Clear training in philosophy, history, case law, and personal officer liability of defensive tactics help imprint on the officer need of a professional response.

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This may help an officer retain his house in case of a lawsuit. For the department, it may result in less civil liability dollars.

Such training however, does not provide an officer with the tools to implement in a teachable, retainable, and tactically workable way the methods and approach of defensive tactics as communication. The first step is understanding the levels of communication and how they fit into the use of force continuum.

Some of the factors in the various communication levels the officer has control over. Other factors the officer may not be able to control, i.e. temperature. Simply being aware of the factor and how it can effect the situation can be helpful.

Communication of a simple "no" or "stop" can take many forms. It can carry the same message through all the levels. In the end the message will be received, hopefully as early as possible in the process of working through the levels of communication.

This communication continuum can be superimposed on whatever use of force continuum a department uses. If your department does not have a published use of force continuum (reviewed annually), it needs to establish one immediately. There may be one established by the state. The one established by Bruce Siddle of Pressure Point Control Tactics System of is an excellent example.

LEVELS OF COMMUNICATION RELATED TO USE OF FORCE CONTINUUMS

Non Verbal Communication

Communication through:

- environment - setting, place, temperature, time
- body language - body language, facial expression, gesture control
- psychological climate - psychological intimidation, psychological tensions, a variety of nonverbal cues, mood, sense of danger
- situational history - history of the setting, cultural baggage, reputation of the communicators
- environmental redirection - environmental distracters, psychological distracters

Verbal Communication

Communication through:

- voice control - tone, inflection, harshness, volume
- use of language - words, language, slang, usage, double meaning
- meaning - meanings to sender, meanings to receiver, meaning to the court, meanings to the crowd
- verbal redirection - verbal distracters

Manual Communication

Communication through:

- signaling - gesturing, directing, touch



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 physiology - pressure points, chokes, stuns, nerve motor dysfunction
 body manipulation and gravity - takedowns, throws, tactical positioning
 striking weapons - personal weapons (kicks, strikes), striking weapons
 other nonlethal weapons - chemical weapons, electrical weapons
 End of discussion (with the offender) - lethal weapons, lethal force.

This division into the basic areas of Nonverbal, Verbal, and Manual is a useful training concept. It helps the officer realize not only where he stands on the use of force continuum but also on the process of communication. The entire process should be permeated with verbal communication; repeating with appropriate volume exactly what is needed.

Practice verbal commands in different situations using the psychological, sociological and communication options much the same way that manual techniques are drilled. But do not sacrifice the usually already too short traditional defensive training.

The communication process begins with the call for service. It does not end until sentencing and/or conclusion of any suit which may result from the actions of the participants.

"I'd rather be tried by 12 than carried by six." is a famil-

iar police saying. Any non-suicidal person would chose that option. But, it is a cop out to view those as the only two options. It is often a smoke screen to avoid the more challenging and professional alternative of effective performance without negative legal consequences. Given three choices—trial, funeral, or going home at the end of shift without any hassles—which would you chose?

Communications will not always prevent confrontation. There is nothing that *always* works to control human behavior. For some offenders, fighting is a recreational outlet. However, it is the mark of a professional to have a selection of options. If one approach does not work, try another. A "Defense Tactics As Communication" perspective will help control the losses throughout the process. L&O

Joseph K. O'Leary, a defensive tactics instructor, works for the Florida Dept. of Corrections Probation and Parole Services as a correctional probational officer, II, youthful offender specialist.



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